The Committee will meet at 9.15 am in Committee Room 1.

1. **Scrutiny of sustainable development**: The Committee will take evidence by video-conference on the scrutiny of sustainable development from—

   Heidi Hautala, Member of the Parliament of Finland and member of the Finnish National Commission on Sustainable Development.

2. **Petition PE799**: The Committee will consider correspondence from the Minister for Environment and Rural Development and the petitioners regarding petition PE799 by the Community of Arran Seabed Trust (COAST).

3. **Petitions**: The Committee will consider the following petitions—

   PE956 by Mary Douglas calling on the Parliament to urge the Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland; and

   PE982 by B Linden Jarvis calling on the Parliament to consider and debate the implications of proposed ship to ship transfers of oil at anchor in the Forth Estuary, specifically focussing such consideration and debate on the likely impact of such operations upon wildlife, tourism, local authority funding of clean-up and how it may use its powers within the 12 mile tidal limits to protect the local ecology, scenery, environment and areas of special scientific interest and habitat within the Estuary.

4. **Subordinate legislation**: The Committee will consider the following negative instrument—

   the Plant Protection Products (Scotland) Amendment (No. 3) Regulations 2006, (SSI 2006/576).

5. **Scrutiny of sustainable development (in private)**: The Committee will consider the evidence received to date, and decide how to proceed with this inquiry.
The following papers are attached:

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<td>Paper from the Clerk [Members only]</td>
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Environment and Rural Development Committee

PE799 – Proposal for a no take zone and marine protection in Lamlash Bay, Arran

Background note

1. The petition, by Tom Vella-Boyle, calls for the Scottish Parliament to urge the Scottish Executive to support COAST’s (Community of Arran Seabed Trust) proposals for a trial closure of an area of Lamlash Bay to all forms of marine life extraction (a no take zone) and the rest of the Bay to mobile fishing gear (a marine protected area).

Background

2. COAST is a community group which has been working on its aims of protecting and conserving Lamlash Bay for over ten years. It has consulted widely on its proposals, both locally and with fishermen, academics, politicians, SNH and the Scottish Executive.

3. Under the original proposal, no fishing of any kind would be allowed in the no take zone. Fishing with pots and creels for shellfish, and recreational sea angling would be allowed in the rest of the protected area, but other types of fishing with “mobile” gears which are towed along the bottom of the seabed i.e. scallop dredges or trawled nets, would not. The purpose of the trial would be to compare the effects on marine life in the no take zone, the rest of the protected area and the “status quo” area outside the bay.

4. The aim of COAST’s petition is to allow marine life to regenerate from fishing activities in order to benefit the local marine environment, the local economy and (through spillover of species from the no take zone) the Clyde fishermen. COAST also wishes to protect a species of maerl in the bay.

5. The petitioners suggested that Lamlash Bay could be the ideal site to test whether marine protected areas (including no take zones) could be an effective tool for fisheries management in Scotland. COAST proposed a 10-year trial period, which could be monitored for its impact.

Progress of the petition

6. The petition and previous correspondence relating to it were circulated with the agenda for the Committee’s meeting on 6 September 2006 and are available at: http://www.scottish.parliament.uk/business/committees/environment/papers-06/rap06-25.pdf
7. The Committee considered the petition at its meeting on 20 September 2006, taking evidence from representatives of COAST, other fisheries interests and the Minister for Environment and Rural Development. Written submissions from some of the witnesses are available at: http://www.scottish.parliament.uk/business/committees/environment/papers-06/rap06-26.pdf

8. The Official Report of that meeting is available at: http://www.scottish.parliament.uk/business/committees/environment/or-06/ra06-2602.htm#Col3437

9. After taking evidence on 20 September, the Committee agreed to write to the Minister. A copy of the Committee’s letter is attached. The Committee:

- recognised the importance of the longer-term goal of a co-ordinated and ecologically coherent network of marine protected areas as part of a wider system of marine management
- considered that the COAST proposal could be an ideal candidate for some sort of trial or pilot project
- noted the early stages of an agreement between all key parties which would allow COAST’s proposal to go ahead, with the addition of cooperation on developing the seeding of scallops in a geographically adjacent area
- noted that this would complement other initiatives, such as the establishment of inshore fisheries action groups and a scallop strategy etc.
- was not persuaded that a voluntary agreement would be a suitable approach and agreed that some form of statutory protection for the area is necessary
- agreed that a properly considered and funded scientific assessment and monitoring process should be established for any scheme in Lamlash Bay
- asked the Minister to consider how research and scientific resources available to the Executive could be deployed to support such a process.

The Committee requested that the Executive used the remainder of 2006 to establish urgent negotiations with interested parties to develop the proposal, with a view to implementing a scheme in 2007. The Committee agreed to keep the petition open until it received the Minister’s response.

10. The Minister’s reply is attached in the annexe. The Minister indicates that discussions have recently taken place on a revised proposal to be developed by COAST, SNH and the Clyde Fishermen’s Association. He states that this is likely to merit statutory underpinning. Further discussions are due in January, and will include the Fisheries Research Services. No timetable for progress is indicated.

11. Further information from COAST is also attached. COAST describes the progress to date on the revised proposal, but also states that a planning
application for a major fish farm development in the area has recently been made. COAST states that this application is currently with North Ayrshire Council, SEPA and the Crown Estate.

Conclusion
12. The Committee is invited to note the progress of discussions in relation to this petition. The Committee may wish to keep the petition open and monitor developments in the new year.
PUBLIC PETITION 799 BY THE COMMUNITY OF ARRAN SEABED TRUST (COAST)

As you know, the Environment and Rural Development Committee considered this petition at its meeting on 20 September. The petition seeks the Parliament’s support for COAST’s proposal that Lamlash Bay should be a marine protected area.

The Committee has had the opportunity of visiting the area and has been able to consider the substantial correspondence relating to this petition, in addition to hearing oral evidence from a full range of interested parties on 20 September.

The Committee is aware that there has been some difficulty in the past in securing consensus from all interested parties on the proposal and that this may have hindered its progress. However, it appears to the Committee that its meeting on 20 September stimulated a mood from all key parties that there is scope for early agreement on a way forward which would allow for development of COAST’s proposals.

The Committee recognises the concern (particularly expressed by fisheries interests) that this proposal should not lead to an unco-ordinated development of similar projects around the country. The Committee also recognises the importance of the longer-term goal of an ecologically coherent network of marine protected areas as part of a wider system of marine management.

Although it appears to be widely agreed that Lamlash Bay might eventually form part of that network, the Committee notes that the establishment of this wider system may be some years in the future. The Committee considers, therefore, that the COAST proposal could be an ideal candidate for some sort of trial or pilot project – not least because there appears to be relatively little fishing with mobile gear in Lamlash Bay at present and because the development of COAST’s proposals seems to represent a very successful model of community engagement.

At the meeting, the various parties indicated that they are at the early stages of an agreement which would allow COAST’s proposal for a statutory no-take zone and an area protected from mobile gear to go ahead, with the addition of co-operation on developing the seeding of scallops in a geographically adjacent area (probably to the North or South end of the Bay). The Committee is persuaded by SNH’s evidence that such a set of proposals would be a useful scheme and would complement (rather than cut across) other initiatives, such as the establishment of inshore fisheries action groups and a scallop strategy etc.
The Committee is persuaded that a voluntary agreement – even if it could include all the relevant stakeholders – is not a suitable approach as it always allows the potential for the scientific value of any monitoring of the area to be undermined by one party or outside interest failing to abide by the agreement on even one occasion.

The Committee considers that some form of statutory protection for the area is necessary. The Committee acknowledges SNH’s advice that the area does not appear to meet criteria for protection as a Natura 2000 site. However, the Committee understands that a number of other possible approaches to statutory protection exist – for example, under fisheries management legislation such as the Inshore Fishing (Scotland) Act 1984 or the Sea Fisheries Shellfish Act 1967 - and requests that you consider how this might be achieved.

The Committee considers that it is important that a properly considered and funded scientific assessment and monitoring should be established for any scheme in Lamlash Bay. Evidence was presented that none of the various existing marine protected areas around Scotland have been subject to coherent ‘before and after’ study, and so whether they fulfil the purposes for which they were set up has never been tested. The COAST proposal would be an ideal opportunity to rectify this.

SNH confirmed to the Committee that it is “keen both to advise on the nature of that monitoring and to fund it, although [it] would have difficulty funding it on its own”. Your officials also confirmed that “we would be willing to help and to contribute … the FRS would certainly be interested in a project such as that under discussion”. The Committee, therefore, requests that you consider how the Fisheries Research Service and other research and scientific resources available to the Executive could be deployed to support such a study.

In the light of these comments, the Committee requests that you view the COAST proposal in a positive light. The Committee requests that the Executive uses the remainder of 2006 to establish urgent negotiations with interested parties to develop the proposal, with a view to implementing a scheme in 2007. The Committee agreed that it would keep the petition open until it is able to consider your response.
Thank you for your letter of 29 September following up the Environment and Rural Development Committee meeting on 20 September at which Public Petition 799 by the Community of Arran Seabed Trust (COAST) was considered.

I am grateful for the Committee's role in the consideration of the COAST proposal. This usefully supplemented our wider efforts to build a consensual way forward.

I am pleased that the Committee acknowledges the a balance that needs to be struck in dealing with this case, and in particular that any approach taken should, as far as possible, carry stakeholder support, should complement other related initiatives and should not lead to un-co-ordinated development of similar projects around the country. The Committee’s views in this respect are very much in line with the approach we have been developing. Likewise, I welcome the recognition that Lamlash Bay does not meet the criteria for designation as a Natura 2000 site.

As you know, we have for some time been looking at the COAST proposal in a positive light, and I am delighted to update the Committee on the very positive progress that has been made since 20 September.

The revised proposition which is emerging is for a new marine management project which would have benefits for both the marine environment and for fish stocks. The project would involve scallop enhancement which would be supported and informed by management measures including those proposed by COAST. It is likely that such a project would merit statutory underpinning and, therefore, enforcement by the Scottish Fisheries Protection Agency. The proposal would, therefore, meet the Committee’s recommendation on statutory protection.

This proposal is being developed by COAST SNH and the Clyde Fishermen’s Association, and supported by SEERAD officials. Representatives of these organisations met on 22 November, and I am very grateful to Lady Isabel Glasgow for agreeing to chair that meeting in her role as convener of the Clyde Forum and for agreeing to carry out this role on an ongoing basis.

It is very early days and there remains a lot of analysis and preparation to be done. I understand, however, that good progress is being made and that all parties showed a willingness to work together on a project which would be taken forward in partnership and a spirit of consensus. I am very encouraged by these developments, and, if successful, we will have facilitated an excellent example of fisheries and environmental interests working together to achieve common goals and with a mutual understanding.

The next step is the preparation of a draft paper by SNH setting out details of the project and how it might be taken forward. This will be discussed at a
further meeting in January of the same group together with FRS. Beyond that I understand that COAST representatives will want to take the views of the Arran community before any practical steps are taken forward.

I will arrange for you to be kept informed of progress on this matter.
This is just a note to update you and the Committee on the progress of the negotiations with the Clyde Fisherman’s Association, SNH and SEERAD.

We all met in Glasgow on 22\textsuperscript{nd} November for preliminary discussions on; what form the new project would take, what were the fundamental principals of the new proposals, what legal framework would be required for the various parts of the proposal and what the ‘time frame’ would be for implementation?

The general conclusions from the meeting were as follows:

- SNH will come up with a plan for a Scallop Enhancement Area outside Lamlash Bay which will include the COAST proposal [including the NTZ], as it stands, within Lamlash Bay. The area would have a scientific rationale on the monitoring of the marine habitat and harvesting of scallops and could have a range of different restrictions to provide a sustainable fishery. This plan could be circulated to the members of the group by Christmas for comment.

- SNH want the project to run as part of the Clyde Coast Forum.

- SNH want the project to be part of the Clyde Pilot Project.

- SEERAD are looking at what the best legal framework will be for the COAST proposals and the rest of the project.

- SEERAD would like to run this proposal through the, as yet to be set up, Clyde Inshore Fishery Group. This will not stop the project being developed while the IFG’s are being set up.

- The Clyde Fisherman’s Association representative will have talks with his members to canvas support for the project and inform them of the possible benefits to them.

- COAST suggested the new enlarged project might have a new name and we are all looking at possibilities.

- The next meeting is in mid January to discuss the proposal further and to ensure an implementation during 2007.

One rather black spot on the horizon is a possible new fish farm which is being proposed by Marine Harvest adjacent to Lamlash Bay at Clauchlands Point. This planning application [No. XX100/224] will be considered by North Ayrshire Council, SEPA and The Crown Estates in December, the final date for ‘objections’ to North Ayrshire Council being 4\textsuperscript{th} December and comments to SEEPa are due by 15\textsuperscript{th} December 2006. COAST finds the timing of this application difficult to believe, especially in view of the review which is at present being undertaken in to the role of The Crown Estate in the planning
process for fish farms and also in view of the time and effort spent by COAST in establishing an area of sea for sustainability purposes.

Both COAST and the CFA are vigorously opposing the sighting of this enormous [14 pens 100 meters in diameter] fish farm. SNH and SEERAD agreed to look at the possibilities of throwing their weight behind the inappropriateness of the location, especially in view of our new combined project.

It would seem such a pity to come so near to establishing a working example of a sustainable marine environment in which commercial fishermen, the island community, SNH and SEERAD are in a joint project, to have these hopes dashed by a massive fish farm that almost no one on the island wants or will benefit from.

Is there any way that the Environment Committee can help with this situation?

The Environment and Rural Development Committee has played a vital role in moving the whole project forward and has bought a focus and determination which has encouraged all parties to work together in a completely new way. We must emphasise that the new project is still in its embryonic stages and we still need the support and guidance that the E & RDC has generously given so far. We at COAST feel that it is vital that the Committee keeps the Petition open and the pressure on all parties to see this new way forward to a time sensitive completion.

COAST is heartened by the Minister’s letter and welcomes his new determination to see all parties work together.
Environment and Rural Development Committee

Petitions PE956 and PE982 – SHIP TO SHIP TRANSFER OF OIL IN THE FIRTH OF FORTH

Note by the Clerk

1. The Public Petitions Committee (PPC) has referred petitions PE956 and PE982 regarding ship to ship transfer of oil in the Firth of Forth to the Environment and Rural Development Committee.

2. PE956 by Mary Douglas calls on the Parliament to urge the Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland.

3. PE982 by B Linden Jarvis calls on the Parliament to consider and debate the implications of proposed ship to ship transfers of oil at anchor in the Forth Estuary, specifically focussing such consideration and debate on the likely impact of such operations upon wildlife, tourism, local authority funding of clean-up and how it may use its powers within the 12-mile tidal limits to protect the local ecology, scenery, environment and areas of special scientific interest and habitat within the Estuary.

Progress of the petitions

4. Petition PE956 was lodged with the PPC in April 2006. At its meeting on 3 May, the PPC heard from the petitioner and agreed to seek views on the petition from: Forth Ports PLC, the Maritime and Coastguard Agency, Melbourne Marine Services, Scottish Natural Heritage (SNH), the UK Offshore Operators Association, Friends of the Earth Scotland, Fife Council, the City of Edinburgh Council, East Lothian Council, West Lothian Council, the Marine Conservation Society, Greenpeace, RSPB, the North Sea Commission, Lloyd’s and the Scottish Executive.

5. Petition PE982 was lodged with the PPC in June 2006. At its meeting on 4 October, the PPC agreed to link consideration of it with petition PE956 and to await the responses to petition PE956 before deciding what further action to take. The Committee also agreed to invite the petitioner to comment on the responses received in relation to petition PE956.

6. At its meeting on 13 December 2006, the PPC agreed to refer both petitions to the Environment and Rural Development Committee. It also agreed to copy the petitions for information to the European Parliament and the UK Government. The
PPC also noted that it has had no response from Forth Ports PLC, Melbourne Marine Services, the UK Offshore Operators Association, Friends of the Earth Scotland and Greenpeace.

7. Copies of the petitions, responses from some of the interested parties identified in paragraph 4, and an analysis by SPICe of the responses, are attached as paper 3b. A SPICe briefing on ship to ship oil transfer is also attached as paper 3c.

**Ship to ship transfer proposals**

8. Melbourne Marine Services Ltd of Sunderland is seeking approval from the Maritime and Coastguard Agency (MCA) and Forth Ports Plc to carry out ship to ship transfer of Russian crude oil off Methil on the Fife coast.

9. The process for granting approval for such activity is complex. The SPICe briefing states that final approval for ship to ship transfer is a reserved matter for the Secretary of State for Transport. The MCA (an executive agency of the Department for Transport) states that the Habitats Regulations do apply in respect of ship to ship oil transfers in Scotland. Forth Ports plc is the competent authority in respect of the Habitats Regulations, and must have regard to them insofar as they may be affected by the exercise of Forth Ports plc’s functions. The MCA states that it is the role of Forth Ports plc, as the harbour authority, to decide whether to permit ship to ship transfers. It has the power to regulate and, if necessary, prevent, transfers.

10. The MCA is the competent authority for responding to pollution from shipping and offshore installations. Scottish Port Authorities, in this case Forth Ports, require oil spill contingency plans (OSCP) to be approved and licensed by the MCA before ship to ship transfers can take place. Forth Ports is the competent authority for implementing the OSCP. The MCA is not permitted to reject an OSCP. It must approve it, or direct that it be altered to make it appropriate for the relevant activity and area. Failure to maintain the plan, or implement it in the event of an incident, is a criminal offence.

11. Forth Ports plc submitted a Plan to the MCA. A public consultation took place in February-May 2006 on whether the OSCP would adversely affect the integrity of nature conservation sites in the area. SEERAD, SNH, SEPA and local authorities in the area were statutory consultees in this process. In August 2006 the MCA approved the Plan, with revisions.

12. The MCA emphasises that Forth Ports plc has a continuing duty to discharge its responsibilities under the Habitats Regulations in respect of any transfer activity which takes place. It (and SNH) also point out that any activities which could disturb a European Protected Species require a licence. It is the responsibility of the Scottish Executive to determine whether a licence would be required for ship to ship transfers in the Forth. SNH states that the only such Protected Species which may be disturbed by oil transfers in the Forth are cetaceans (whales,
13. It is understood that no final decision has yet been taken on Melbourne Marine Services’ proposal. Forth Ports plc stated in a letter dated 29 June to the PPC that it was still assessing potential ship to ship transfer operations in the Firth of Forth.

**Options for consideration of the petition**

14. **The Committee is invited to consider how it wishes to deal with petitions PE956 and PE982.**

15. The petitioner in PE982 requested that the Parliament debate the implications of the proposed oil transfer. A Members’ Business debate on ship to ship transfer was held on 9 March 2006.

16. The petitioner in PE956 requested that the Parliament ensure that the Habitats Regulations are applied to the proposal. The summary above indicates that the various authorities have taken these Regulations into account in the decision-making process, although it is not clear whether any need for a licence in respect of European Protected Species has been resolved.

17. **The Committee is invited to consider whether it wishes to take evidence on the petitions.** If so, the Committee is invited to consider how this should be managed within its work programme in the remainder of the Session. The Committee may wish to consider whether any evidence relating to the petitions can be incorporated as part of its marine environment inquiry.

18. To accommodate the Committee’s other work, the Committee agreed to take oral evidence for the marine environment inquiry over three meetings in January 2007. Given the constraints on its time, the Committee agreed a general remit for the inquiry, and has not focused the evidence programme on any specific sector, activity or geographical area. One of the aims is to consider the competing demands placed on the marine environment, and the regulatory framework for managing these. A *summary of the programme for the inquiry is attached as an annexe to this paper.*

**Options**

*Option A*

19. The Committee may consider that the agreed evidence programme outlined in the annexe gives adequate opportunity to examine the issues raised by the petitions in the context of the inquiry. If so, the Committee may wish to agree that, following the conclusion of the inquiry, it will consider what, if any, further action to take on the petitions.
Option B
20. The Committee may wish to consider whether additional witnesses need to be added to the agreed programme in order to allow it to examine this issue fully in the context of the marine environment inquiry. If so, the Committee is invited to agree which other witnesses should be invited. Given other demands on the Committee’s agenda, 17 January would be the most appropriate day on which to add selected other witnesses. The Committee may have time to add one further panel that day.

Option C
21. The Committee may consider that the issues raised in the petitions require a separate evidence session to be examined fully. If so, it is suggested that the Committee’s programme could accommodate an evidence session in late February. If the Committee is minded to adopt this option, it is invited to agree which witnesses should be invited. Possible witnesses could include:

- The petitioners
- Melbourne Marine Services
- Forth Ports plc
- Maritime and Coastguard Agency
- SNH
- RSPB
- Local authorities
- Minister for Environment and Rural Development

Recommendation

22. The Committee is invited to consider how it wishes to deal with petitions PE956 and PE982.
Annexe

Marine Environment Inquiry - evidence programme

9 January

The first session is a round table discussion with witnesses who can give a broad range of general perspectives on the marine environment, the main challenges (particularly from a Scottish perspective) and the regulatory framework. Witnesses invited include SNH.

17 January

The second session will hear from two panels of witnesses representing some of the main regulatory bodies which might be expected to co-operate in managing the competing demands on the marine environment. Witnesses invited include the Maritime and Coastguard Agency, SEPA and Forth Ports plc.

24 January

The third session will hear from coastal forum projects and from marine spatial planning pilot projects in the Clyde, at St Abbs and Shetland, as well as from the Minister for Environment and Rural Development.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

<table>
<thead>
<tr>
<th>Details of principal petitioner:</th>
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<tr>
<td>Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available</td>
</tr>
<tr>
<td>MRS MARY DOUGLAS</td>
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<th>Text of petition:</th>
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<td>The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.</td>
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<tr>
<td>The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS</td>
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Petition by Mary Douglas calling on the Scottish Parliament to urge the Scottish Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland.

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</table>
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Approached Fife Council, local Councillors, MP's, MSP's, Scottish Parliament Ministers, Secretary of State for Scotland, Forth Ports, various environmental organisations and the Marine & Coastguard Agency.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.

I DO request to make a brief statement before the Committee

I DO NOT request to make a brief statement before the Committee

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature ...

Date 3rd April 2006

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

B Linden Jarvis
(For: North Bute PLC)

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed ship to ship transfers of oil at anchor in the Forth Estuary, specifically focussing such consideration and debate on the likely impact of such operations upon wildlife, tourism, local authority funding of clean-up and how it may use its powers within the 12 mile tidal limits to protect the local ecology, scenery, environment and areas of special scientific interest and habitat within the Estuary.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition.
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Assistance has been sought from and representations made to Douglas Alexander MP, Scottish Natural Heritage, Her Majesty Queen Elizabeth II, The Princess Royal, RSPB, SEPA, David Cameron MP, Orkney Harbours, Scottish Executive, Forth Ports PLC, The Scotsman, The Glasgow Herald, Sunday Herald, BBC Scotland, various institutional shareholders of Forth Ports PLC.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee’s consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below whether you request to make a brief statement before the Committee when it comes to consider your petition.

| I DO request to make a brief statement before the Committee | ☒ |
| I DO NOT request to make a brief statement before the Committee | ☐ |

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature: 

Date: 14-6-06

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,  
The Scottish Parliament,  
Edinburgh  
EH99 1SP  
Tel: 0131 348 5186  Fax: 0131 348 5088  
e-mail: petitions@scottish.parliament.uk
PUBLIC PETITIONS COMMITTEE

Petition PE956: Ship to Ship Oil Transfer in the Firth of Forth

Summary of Written Issues Raised by Respondents to Call for Written Evidence

The Public Petitions Committee decided, at its meeting of 3 May 2006, to write to 17 organisations requesting their views on the issues raised by petition PE956. In total 10 responses have been received. The responses came from a variety of sources, including local authorities, the Scottish Executive, Government agencies, two international local and regional government associations and environmental NGOs. Despite requests for comments, no responses were received from the harbour authority (Forth Ports), Melbourne Marine Services (the company proposing the ship-to-ship transfer of oil) or any ports or shipping industry related body.

The individual responses tended to focus on a few issues of particular concern. However, a number of recurring themes did emerge, which are examined Table 1 below. It is important to note that this is not a comprehensive list of issues raised by each respondent, rather an attempt to highlight some of the key recurring comments, or issues of particular concern, raised by individual respondents with a particular knowledge or understanding of a particular issue.

Despite the fact that the committee asked organisations for responses on technical and legal matters, six respondents decided to indicate support for the issues raised by the petitioners, four respondents did not express support or opposition and no-one specifically expressed opposition to the matters raised in the petition.

Annex 1 provides a summary of which organisation raised the issues outlined in Table 1 and highlights which organisations supported the petition or expressed on opinion on its merits.

Table 1: Key Issues Identified by Respondents to the Committee’s Call for Evidence

<table>
<thead>
<tr>
<th>Issue</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Court of Justice Ruling</td>
<td>Two respondents mention the European Court of Justice Ruling of 20 October 2005 which found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law.</td>
</tr>
<tr>
<td></td>
<td>Fife Council argues that this judgement means there is no proper legal framework allowing the Maritime and Coastguard Agency (MCA): to approve or reject the oil spill contingency plan.</td>
</tr>
<tr>
<td></td>
<td>The two respondents also question whether the MCA could have taken full account of the requirements of the Habitats Directive in deciding whether to approve the oil spill contingency plan as the UK Habitats Regulations (Conservation (Natural Habitats, Etc) Regulations 1994) they were operating under have been ruled to be deficient.</td>
</tr>
<tr>
<td>Risk Vs. Reward</td>
<td>Six respondents raised concerns that the proposals represented a real risk to the environment of the Firth of Forth from potential oil spills yet provided little real benefit to those communities which could be affected, e.g. Fife Council &quot;...does not anticipate any economic benefit&quot; while the Marine Conservation Society &quot;...can see very little public benefit...Quite the contrary, there is the risk of great public disbenefit&quot;. None of the respondents that expressed a view considered that the benefits of the proposals outweighed the risks.</td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
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<td>-------------------------------</td>
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<tr>
<td>Oil Spill: Economic Impact</td>
<td>Four respondents highlighted the possible impact that any oil spill could have on local economies, both directly through clean-up costs and indirectly through negative impacts on industries such as tourism or fishing. West Lothian Council is concerned that any oil spill would “...impact on the tourism industry a major contributor to the economy in this area” while the North Sea Commission considers that “the effects of oil spills on the coastal economy - often relying on fishing and tourism, both of which depend on a clean environment - can be devastating”.</td>
</tr>
<tr>
<td>Oil Spill: Environmental impact</td>
<td>Five respondents outlined concerns relating directly to the possible impact of oil spills on the environment of the Firth of Forth Estuary. Fife Council considers that “The damage to Fife’s sensitive coastal habitats and wildlife would be incalculable and long lasting.”</td>
</tr>
<tr>
<td>Costs to Local Authorities</td>
<td>Three respondents raised concerns that the ship-to-ship oil transfers would result in increased costs for local authorities, e.g. costs associated with extra contingency planning and possible clean-ups, without providing any benefits or revenue for those authorities.</td>
</tr>
<tr>
<td>Role of Harbour Authorities</td>
<td>The City of Edinburgh Council considered that “Local authorities are, therefore, being asked to accept a large increase in risk and be expected to increase their preparedness and response without receiving any direct support or benefit from this proposal”. KIMO state that “The experience of cleaning up oil spills in other coastal areas of the UK in recent years confirms that local authorities involved have encountered significant difficulties in attempting to recover costs incurred by them”</td>
</tr>
<tr>
<td>New regulations</td>
<td>Two respondents raised concerns about the role of Forth Ports as the main beneficiary of any ship-to-ship oil transfers and as the ‘competent authority’ under the Habitats Regulations, e.g. the City of Edinburgh Council state that “…Forth Ports will require to demonstrate a lack of bias in the approval process as clearly they have a perceived conflict of interest between acting as approval authority and beneficiary”.</td>
</tr>
</tbody>
</table>

The responses provided by the Scottish Executive, Scottish Natural Heritage and the Maritime and Coastguard Agency are, due to the fact they were drafted by civil servants, effectively statements of fact and do not offer any subjective opinions on the issues raised in the petition. The key points made by these organisations can be summarised as follows:

**Maritime and Coastguard Agency (MCA):** The MCA is required to approve oil spill contingency plans, or major amendments to them, under the provisions of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998. The MCA considers that the Habitat Regulations apply to ship-to-ship transfer of oil in Scotland. As such the MCA held a consultation on the potential impact of the revised oil spill contingency plan on designated nature conservation sites in the Firth of Forth, which ran from 16 February 2006 until 11 May 2006. In light of responses received the MCA requested that a number of changes be made to the oil spill contingency plan. The MCA approved the plan, with
revisions, on 25 August 2006 while highlighting to Forth Ports their ongoing responsibilities under the Habitats Regulations.

**Scottish Natural Heritage (SNH):** SNH considers that the Habitats Regulations apply to both ship-to-ship oil transfers and oil spill contingency plans and as such Forth Ports and the MCA are required to carry out ‘appropriate assessments’ of the potential impacts of the oil transfer proposals and oil spill contingency plan on designated nature conservation sites. SNH has worked with both organisations to ensure they have taken full account of the relevant legislative requirements. SNH consider the only protected species that could be affected by the ship-to-ship oil transfer proposals are cetaceans, i.e. whales, dolphins and porpoises.

**Scottish Executive:** The Executive highlights that issues relating to merchant shipping in UK waters are reserved to the UK Government. The MCA has a duty to consider oil spill contingency plans and, as part of their consideration of such plans must consult with the appropriate Government fisheries department (SEERD), the environmental regulator (SEPA) and the statutory nature conservation body (SNH) and relevant local authorities. The Executive agrees with the SNH view that both the MCA and Forth Ports are competent authorities under the provisions of the Habitat Regulations.

Alan Rehfisch
Senior Research Specialist
SPICe
Appendix 1: Issues raised by respondents to the Public Petitions Committee's call for written evidence on issues raised by petition PE956

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Role</th>
<th>Supports Petition</th>
<th>Objects to Petition</th>
<th>No opinion expressed</th>
<th>European Court</th>
<th>Risk vs. reward</th>
<th>Oil spill Economic impact</th>
<th>Oil spill environment impact</th>
<th>Costs to local authorities</th>
<th>Role of Harbour Authorities</th>
<th>New Regs</th>
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</thead>
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<tr>
<td>Fife Council</td>
<td>Local Authority</td>
<td>X</td>
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<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Marine Conservation Society</td>
<td>Environmental NGO</td>
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<tr>
<td>Maritime and Coastguard Agency</td>
<td>Government Agency</td>
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<td>North Sea Commission</td>
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<tr>
<td>RSPB</td>
<td>Environmental NGO</td>
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<tr>
<td>Scottish Executive</td>
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<tr>
<td>Scottish Natural Heritage</td>
<td>Government Agency</td>
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<tr>
<td>KIMO</td>
<td>Local/Regional Government Organisation</td>
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<td>City of Edinburgh Council</td>
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<td>4</td>
<td>4</td>
<td>5</td>
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<td>2</td>
</tr>
</tbody>
</table>


29th June, 2005.

Dr. James Johnston,
Clerk to the Public Petitions Committee,
The Scottish Parliament,
TG.01,
Parliamentary Headquarters,
EDINBURGH
EH99 1SP

Dear Dr. Johnston,

CONSIDERATION OF PETITION PE956

Thank you for your letter of 15th May regarding Petition PE956. The questions which you raise are currently undergoing an independent assessment as part of our overall assessment of potential Ship to Ship Transfer operations in the Firth of Forth. As such it would be premature for us to comment on the issues which were raised until this assessment has been properly concluded and communicated. In this event, we may not be able to meet your deadline for response of 14th August.

Yours sincerely,

Charles G. Hammond
GROUP CHIEF EXECUTIVE
PETITION PE956

Petition by Mary Douglas calling on the Scottish Parliament to urge the Scottish Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland

MARITIME AND COASTGUARD AGENCY RESPONSE


- It is our understanding that the petition has been prompted by the proposal that ship-to-ship transfers be carried out in the Firth of Forth. In the case of the Firth of Forth, it is our understanding that Forth Ports plc – as a competent authority under the Habitats Regulations – must have regard to the requirements of the Habitats Directive insofar as they may be affected by the exercise of Forth Ports plc’s functions and that it has powers to regulate, and if necessary, prevent, ship to ship transfers.

SUPPORTING INFORMATION

1. The term "ship-to-ship transfer" is used to describe the transfer of oil, carried as cargo, from one tanker to another. Ship-to-ship transfer is an internationally recognised practice, which takes place worldwide. There are voluntary industry guidelines issued under the aegis of the International Chamber of Shipping and the Oil Companies International Marine Forum, which set out the procedures to be followed when carrying out ship-to-ship transfers. Domestically, ship-to-ship transfer operations have a very good record, both in respect of safety and in respect of the environment.

2. Although ship-to-ship transfers have been taking place in UK waters for a number of years, this has become a high profile issue in recent years because of the increase in the scale of Russian oil exports. The oil is shipped out of the Baltic and North Russian ports in small tankers because large tankers cannot negotiate the shallow waters of the Baltic Sea and some of the approaches to the Northern Maritime Corridor ports, but the economics of the trade dictate that the oil should then be transferred into large tankers for the long voyage to its eventual destination in the Americas or the Far East.
Benefits associated with ship-to-ship transfers

3. Ship-to-ship transfer operations can provide a substantial economic benefit to the locality in which they are carried out – the most prominent example in the UK being Scapa Flow in the Orkney Islands. The UK Government's concern is to ensure that such operations are regulated and managed appropriately, so that they are carried out safely and with minimum risk to the environment.

Contingency plans for dealing with oil spillages

4. Oil spill contingency plans are designed to ensure that trained personnel, and the necessary equipment for responding to a spill, are close at hand.

5. The legislation which governs oil spill contingency plans is the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1996 ("the OPRC Regulations"). These Regulations are drafted in terms of the MCA as decision-maker in the matter of approving oil spill contingency plans, or revisions to it, for harbour authorities and operators of oil handling facilities.

6. If a major change occurs which could affect the validity or effectiveness of a plan to a material extent, then the harbour authority or operator must submit to the MCA a new plan, or amendments to an existing plan, within three months of the major change becoming known to the harbour authority or operator.

7. The OPRC Regulations do not permit the MCA to reject an oil spill contingency plan submitted to it. It must either approve the plan or, if the plan is not compatible with the National Contingency Plan or is not appropriate for dealing with oil pollution incidents which may occur in the area in which the harbour authority or operator has jurisdiction or exercises responsibility, it may, after consultation with the harbour authority or operator, direct that the plan be altered. It is the duty of the harbour authority or operator to alter the plan if so directed by the MCA. Failure to maintain the plan (with any directed alterations) or failure to implement the approved plan in the event of an oil pollution incident is a criminal offence.

The Firth of Forth proposal and the assessment carried out by the MCA

8. Forth Ports has submitted to the MCA an oil spill contingency plan to cover ship-to-ship oil transfer operations in the Firth of Forth and a set of proposed revisions to the Clearwater Forth overarching oil spill contingency plan ("the OSCPs").
9. During informal consultations with interested parties, the question of whether the MCA was required to conduct an appropriate assessment of the OSCPs under the Habitats Directive, as implemented by the Habitats Regulations, was raised. Although it was not considered by the MCA that the OSCPs were likely to have a significant effect on relevant nature conservation sites in this case, nonetheless it was considered appropriate in this case, as a matter of good policy, for there to be a formal assessment of whether the OSCPs would adversely affect the integrity of relevant nature conservation sites.

10. As part of that assessment a public consultation was held to assess the implications for relevant nature conservation sites of Forth Ports' OSCPs. The subject had generated very strong interest on local economic, environmental and public health grounds, and it was decided to seek consultees' views to help establish whether the OSCPs would adversely affect the integrity of those nature conservation sites. This was announced by the Secretary of State for Transport on 21 November 2005.

11. The public consultation commenced on 16 February 2006 and closed twelve weeks later, on 11 May.

12. On 14 July, the MCA announced its intention to approve the submitted oil spill contingency plan covering ship-to-ship transfers in the Firth of Forth and the amendments to the overarching Clearwater Forth contingency plan, subject to a number of specified changes to each of the two plans. Concurrently, the assessment, a letter to Forth Ports, a responses consultation table and a summary analysis of consultee responses was posted on the MCA website. The web address of these documents is as follows:

Compatibility of ship to ship transfers with duty to protect the environment and natural habitats

13. It is the role of Forth Ports plc, in its capacity as the harbour authority, to decide whether to permit ship-to-ship transfers. There is provision to regulate (and if necessary, prevent) ship to ship transfers in the Firth of Forth. These functions are vested in Forth Ports, which has power under byelaws enacted under local legislation to regulate whether vessels can anchor to transfer cargo.

14. Forth Ports plc, in its capacity as a harbour authority, is moreover under a duty to have regard to the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest when formulating or considering any proposals relating to its functions under any enactment. It must also take into account any effects which the proposals may
have on the natural beauty of the countryside, flora or fauna. This duty is set out in section 48A of the Harbours Act 1964 and applies to all harbour authorities.

15. Any final decision taken by the MCA in respect of the submitted plans could not discharge Forth Ports plc from its duties under regulation 3 of the Habitats Regulations, as the competent authority for the purposes of the Habitats Directive in respect of ship-to-ship oil transfers in the Firth of Forth or any other applicable duty in respect of the environment.

16. Additionally, under regulation 44 of the Habitats Regulations, there is provision to license activities that could disturb a European Protected Species, or damage or destroy breeding sites or resting places. As this is for a devolved purpose, it is the responsibility of the Scottish Executive to determine whether a licence would be required for ship-to-ship transfers in the Firth of Forth.
Dear Dr Johnston,

Title: Consideration of petition PE956

Thank you for your letter of 15 May 2006 inviting Scottish Natural Heritage’s (SNH’s) views on the above petition, which relates to proposals for ship-to-ship oil transfers in the Firth of Forth. The petition concerns the application of the Conservation (Natural Habitats, &c.) Regulations 1994 (‘Habitats Regulations’), as amended, to the proposals.

The Habitats Regulations implement Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (‘Habitats Directive’) in Scotland. The Regulations place a statutory duty on competent authorities to meet the requirements of this Directive. At present, there is no specific domestic legislation which sets out how the requirements of the Habitats Directive should be applied to ship-to-ship oil transfers, but Habitats Regulations 3.3 and 3.4 impose general duties on competent authorities.

Regulation 3(3) states that:

*In relation to marine areas any competent authority having functions relevant to marine conservation shall exercise those functions so as to secure compliance with the requirements of the Habitats Directive.*

Regulation 3(4) states that:

...every competent authority in the exercise of any of their functions, shall have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

Article 6(3) of the Habitats Directive states that:

*Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site... the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.*
In SNH’s view, both the proposed ship-to-ship project and the related oil spill contingency plans fall within the definition of plan or project in the meaning of the Habitats Directive, and should be subject to the provisions of Article 6(3).

In commenting on the non-statutory Environmental Statement for the ship-to-ship proposals, and more recently on the Maritime and Coastguard Agency’s (MCA’s) consultation on the related oil spill contingency plans, SNH has consistently sought to ensure that the competent authorities responsible for considering the ship-to-ship proposals are aware of the requirements of the Habitats Regulations and comply with them. Those competent authorities are: (i) Forth Ports, who as harbour authority are responsible for overall approval of the ship-to-ship proposals; and, (ii) the Maritime & Coastguard Agency (MCA), who are responsible for approval of the related oil spill contingency plans.

In particular, we have argued for:

- appropriate assessments to be carried out by Forth Ports on the implications of the ship-to-ship proposals for the European sites in the Forth, in view of each site’s conservation objectives. Those sites are: the Firth of Forth Special Protection Area (SPA); the Forth Islands SPA, and; the Isle of May Special Area of Conservation (SAC). The appropriate assessments must consider any impact on the qualifying interests of a site (the species for which a site has been designated), both within the site boundary itself and, where appropriate, outwith the boundary in the surrounding area.

- an appropriate assessment to be carried out by the MCA on the implications of the oil spill contingency plans for those European sites.

Forth Ports and the MCA both recognise their roles as competent authorities. At time of writing, we are in the process of considering additional material provided to us by Forth Ports, which will inform the appropriate assessments which they will undertake. We will provide them with our advice shortly. It will then be for Forth Ports as competent authority, drawing on our advice, to reach a judgement as to whether or not it can be ascertained that the ship-to-ship proposals will not adversely affect the integrity of one or more of the European sites. If they cannot conclude that there will not be an adverse effect, then they cannot agree to the proposals unless they believe there to be no alternatives and imperative reasons of overriding public interest. In the event of a negative assessment, and should Forth Ports still wish to proceed, they are required to give Scottish Ministers 21 days notice.

For their part, the MCA have recently announced the conclusions of their public consultation which aimed to “assess the implications of Forth Ports’ revised and amplified plan for designated nature conservation sites in the Firth of Forth (in view of their conservation objectives) with a view to ascertaining whether the plan will adversely affect the integrity of the sites concerned.” The MCA have requested that a number of changes be made to the plans. They have, however, concluded that the oil spill contingency plans “will not have any adverse effects on the integrity of the relevant nature conservation sites, or on relevant species such as seals and seabirds outside those sites.” SNH is currently considering whether it wishes to make further comment to MCA in light of this conclusion.

**European Protected Species**

The Wildlife and Countryside Act 1981 (as amended) and The Nature Conservation (Scotland) Act 2004 provide full protection for certain animal and plant species. Some of
these species are further protected as 'European Protected Species' under the Habitats Regulations (Regulations 39 and 43 of The Conservation (Natural Habitats &c.) Regulations 1994 and Regulations 10 and 13 of The Conservation (Natural Habitats &c.) Amendment (Scotland) Regulations 2004). These Regulations mean that it is illegal to:

- Deliberately or recklessly kill, injure, disturb or capture/take European Protected Species of animal or deliberately or recklessly harass any cetacean.
- Damage or destroy the breeding sites or resting places of such animals

Where it is proposed to carry out works which will affect European Protected Species or their shelter/breeding places, whether or not they are present in these refuges, a licence is required from the licensing authority (in this case, the Scottish Executive).

In SNH's view, the only European Protected Species which may be affected by the ship-to-ship oil transfer proposals are cetaceans, i.e. whales, dolphins and porpoises. Through our comments on the Environment Statement we have requested that further information be sought which will allow an assessment to be made of the extent to which cetaceans are present in the Forth and may be affected by the ship-to-ship proposals. This will clarify whether or not a licence will be required, and inform the Scottish Executive's consideration of any licence application, should one be required.

I hope that this letter has clarified the steps which SNH has taken to date to help ensure, as the petitioner requests, that the Habitats Regulations are properly applied to the ship-to-ship proposals.

Yours sincerely,

Iain Rennick
Area Manager,
Forth & Borders
Dr. J. Johnston,
Clerk to the Public Petitions Committee,
The Scottish Parliament,
Parliamentary Headquarters,
EDINBURGH,
EH99 1SP.

Direct Line: 01592 413999
Email: douglas.sinclair@fife.gov.uk

Your Ref:  
Our Ref:  DS/EAL/J7.6

25th May, 2006

Dear Dr. Johnston,

CONSIDERATION OF PETITION PE 956-
PROPOSED SHIP TO SHIP OIL TRANSFERS FIRTH OF FORTH

Thank you for your letter dated 15th May, 2006, in the above regard inviting Fife Council’s views on issues identified in the Petition PE 956 to the Scottish Parliament by Mrs. Mary Douglas,

In general terms, this Council is supportive of the petition undertaken by Mrs. Douglas as it is a matter of public record that Fife Council is against ship to ship oil transfers in the Firth of Forth. Fife Council registered its opposition to these proposals at the meeting of its Environment and Development Committee in March, 2005, when members voted unanimously against this undertaking. This decision was subsequently ratified at the full meeting of Fife Council in April, 2005.

Further measures agreed by Fife Council included submitting a resolution to the North Sea Commission in June, 2005, calling for a European strategy to deal with the threat from STS oil transfer operations in inshore waters. The Council also agreed to lobby representatives at all levels including MEPs, MPs and MSPs to invite support for the Council’s position. In addition, Fife Council has joined with other maritime local authorities in the Firth of Forth including East Lothian and City of Edinburgh Councils who have voiced similar objections to this proposal.

Maritime and Coastguard Agency Consultation

As a stakeholder in the Clearwater Forth Oil Spill Contingency Scheme, Fife Council was consulted by the Maritime and Coastguard Agency (MCA), on behalf of the Minister for Transport, concerning proposed transfer Ship by Ship (STS) of crude oil and other hydrocarbons by Melbourne Marine Services in the Firth of Forth.

Fife Council was also invited to comment on the revised and amplified oil spill contingency plans submitted to the MCA by Forth Ports plc and Briggs Environmental
Services Ltd. (BESL) on behalf of Melbourne Marine Services and on supporting information from Forth Ports and Scottish Natural Heritage.

Fife Council submitted a detailed reply on 9th May, 2006, to the MCA consultation highlighting technical and safety concerns this Council has in relation to the revised and amplified oil spill contingency plans forwarded to the MCA by Forth Ports plc and BESL, on behalf of Melbourne Marine Services, and on supporting information from Forth Ports and Scottish Natural Heritage. (Copy attached)

**Legal Position**

Fife Council has also sought the Opinion of Counsel to establish the legality of the proposals being taken forward, particularly in view of the European Court Justice Ruling on 20th October, 2005, which found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law to ensure the protection of sensitive coastal and marine habitats such as the Firth of Forth.

The Opinion, by R. Douglas Armstrong QC, confirms that the MCA, in deciding whether or not to approve the BESL STS OSCP along with any amendments to the Clearwater Forth Oil Spill Contingency Plan that would allow STS to go ahead, faces legal difficulties. The Council has, therefore, called on the MCA to either refuse to determine the proposed amendments to the plan or determine that they are not appropriate without recommending any amendment.

Fife Council has also reserved all rights competent to it to challenge any decision of the MCA in appropriate legal proceedings and nothing in its response to the consultation shall be held to waive or modify such rights as the Council may have in relation to this matter.

Fife Council believes that the absence of formal planning controls for a strategic venture of this magnitude is a completely untenable position and is calling for its refusal as it should not be approved in law.

It is also concerning that the final version of the Marine Pollution, The Merchant Shipping (Ship to Ship Transfers) Regulations 1999, still remain only in draft form. However, given the vast scale of the proposed STS activity in the Firth of Forth, Fife Council is of the view that the proposed regulations lack robustness and that associated safeguards would still prove insufficient.

**Contingency Plans - Assessing the Risk**

Having considered in detail the oil spill contingency plans, environmental impact and risk assessments and supporting documents supplied as part of the ministerial consultation, Fife Council is not persuaded that the proposed STS oil transfer activity is intrinsically safe at a location so close inshore and that further potential for marine accidents and consequential spills could arise particularly during mooring, transfer and unmooring phases.

The potential for an oil spill is significantly increased from existing levels and the effects of such a spillage, particularly a persistent Group IV substance such as Russian Export Blend Crude Oil would have a devastating effect on our tourism and fishing industries.
The damage to Fife’s sensitive coastal habitats and wildlife would be incalculable and long lasting.

Risks versus Reward

Fife does not anticipate any economic benefit from the proposed STS operations and notes that even a minor spill could cost the Council millions of pounds in clean-up costs as well as extensive loss of revenue to Fife’s fragile coastal economy before national or internationally agreed levels of compensation were awarded.

Given the concerns about potential damage to vulnerable environmental and vital economic interests along the Fife Coastline from an unforeseen oil spill and a lack of binding assurances concerning appropriate safeguards and preventive/mitigatory measures by the operators and statutory agencies Fife Council remains opposed to this proposal.

Fife Council has, therefore, recommended, in the strongest terms, that the MCA determine that the proposed amendments are not appropriate for dealing with oil pollution incidents which may occur in the area in which the harbour authority or operator has jurisdiction or exercises responsibility. Indeed, Fife Council considers that the MCA is legally bound to do so in order to properly comply with the Habitats Directive 1994 regulations.

I trust the foregoing adequately explains the Council’s position on this issue but please do not hesitate to contact me should you have any queries.

Yours sincerely,

Douglas Sinclair,
Chief Executive.
FIFE COUNCIL RESPONSE TO MCA CONSULTATION ON PROPOSED SHIP TO SHIP TRANSFERS OF OIL IN FIRTH OF FORTH

1. INTRODUCTION

1.1 As a stakeholder in the Clearwater Forth Oil Spill Contingency Scheme Fife Council has been consulted by the Maritime and Coastguard Agency (MCA), on behalf of the Minister for Transport, concerning a proposal by Melbourne Marine Services to conduct Ship to Ship (STS) transfer of crude oil and other hydrocarbons in the Firth of Forth.

1.2 Fife Council has been invited to comment on the revised and amplified oil spill contingency plans submitted to the Maritime and Coastguard Agency (MCA) by Forth Ports plc and Briggs Environmental Services Ltd (BESL) on behalf of Melbourne Marine Services and on supporting information from Forth Ports and Scottish Natural Heritage.

1.3 A technical reply was submitted by Fife Council on 29th April 2005 to the MCA, copied to Forth Ports, following an earlier consultation by Aquatera, Environmental Consultants for Melbourne Marine Services, concerning proposed STS activities in the Firth of Forth.

1.4 This current report forms Fife Council’s updated reply to technical and safety issues identified in the following documents provided by the MCA in the latest consultation package:

- STS OSCP for Oil Transfer Operations in the Firth of Forth - BESL Nov. 2005
- Revised Clearwater Forth Oil Spill Contingency Plan – Forth Ports plc Nov. 2005
- Assessment of Oil Spill Risk from STS Operations - Aquatera Nov. 2005 Revision 3
- Environmental Impact Assessment of STS Operations - Aquatera Nov. 2005 Revision 2
- Scottish Natural Heritage's detailed comments - Nov./Dec. 2005

2. BACKGROUND

2.1 Fife Council has already registered its opposition to these proposals at the meeting of its Environment and Development Committee in March 2005 when members voted unanimously against this undertaking. This decision was subsequently ratified at the full meeting of Fife Council in April 2005.

2.2 Further measures agreed by Fife council included the submission of a Resolution to the North Sea Commission in June 2005 calling for a European strategy to deal with the threat from STS oil transfer operations in inshore waters. The council also agreed to lobby representatives at all levels including MEPs, MPs and MSPs to invite support for the council’s position.
2.3 Fife Council has also joined with other maritime local authorities in the Firth of Forth including East Lothian and City of Edinburgh Councils who have voiced similar objections to this proposal.

3. LEGAL POSITION

3.1 Fife Council also agreed to seek the Opinion of Counsel to establish the legality of the proposals being taken forward, particularly in view of the European Court Justice Ruling on 20th October 2005 which found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law.

3.2 The Opinion, by R. Douglas Armstrong QC, confirms that the MCA, in deciding whether or not to approve BESL STS OSCP along with any amendments to the Clearwater Forth Oil Spill Contingency Plan that would allow STS to go ahead, faces legal difficulties.

3.3 These difficulties can be broken down into four parts:

(a) The case of European Commission v UK holds that there is no proper transposition of the Habitats Directive in to UK law. This has far wider implications for the UK government than the approval of ship to ship transfer operations. It is understood that the 1994 regulations are to be amended in September this year.

(b) However, in the specific context of ship to ship transfer, the lack of any proper regulatory framework requiring the proper assessment of plans and projects under the Directive makes it even clearer that there is no provision in terms of the domestic legislation for such an assessment to be carried out in advance of a plan proceeding, and for that plan to be halted if it is found to contravene the Habitats Directive. The Council has commented elsewhere in this response on the inadequacy of the current draft STS regulations. Unless and until a proper legal framework exists, both importing the Directive and allowing refusal of any plan or project which might breach it, the MCA perils itself in coming to a decision on these proposals which allows them to proceed.

(c) Notwithstanding the current lack of a legal framework, Counsel considered what current regulations the MCA should have regard to if it did decide to proceed to a decision. He considered that the MCA would have to have regard not just to the Merchant Shipping (Oil Pollution Preparedness Response and Co-operation Convention) Regulations 1998, but also the Conservation (Natural Habitats, Etc) Regulations 1994 ("the 1994 Regulations"). It seems clear, from case law such as R (On the application of Friends of the Earth) -v- Environment Agency [2004] Env. L.R. 31, that the proposals would constitute a 'plan' for the purposes of the regulations. If the MCA fails to have proper regard to the 1994 Regulations, then it renders itself open to challenge on a separate ground.
(d) In the Council's view, it is difficult to see how the MCA could justify agreeing to a planned operation the consequences of which, in the event of an oil spill, would be disastrous for the marine environment in the Firth of Forth. Recent European case law, such as Waddenzee, 127/02, supports this view. This goes far beyond an assessment of contingency measures which assume the underlying acceptability of such proposals.

3.4 The Council calls on the MCA therefore to either refuse to determine the proposed amendments to the plan or determine that they are not appropriate without recommending any amendment. The Council reserves all rights competent to it to challenge any decision of the MCA in appropriate legal proceedings and nothing in this response shall be held to waive or modify such rights as the Council may have in relation to this matter.

4. **SCOPE OF STS CONSULTATION**

4.1 Fife Council has informed the MCA of its dissatisfaction with the scope and nature of the consultation and has expressed these concerns separately in writing on 21 March 2006. It is our view that the consultation is neither fair nor transparent as respondents are constrained to commenting on the adequacy of the oil spill contingency plans and not the underlying principle of whether ship to ship oil transfers should be taking place at all in the Firth of Forth.

4.2 Fife Council therefore reserves its rights to found upon this point in future proceedings but will, nevertheless, participate in the ongoing consultation believing that it must avail itself of every opportunity to make representations against these proposals.

5. **MELBOURNE MARINE SERVICES STS OIL SPILL CONTINGENCY PLAN FOR OIL TRANSFER OPERATIONS IN THE FIRTH OF FORTH – BESL FEBRUARY 2006**

5.1 Fife Council's comments/observations on the STS Oil Spill Contingency Plan prepared by BESL on behalf of Melbourne Marine Services are listed below:

5.2 **Scope and Purpose of the Plan**

Para. 2- It is concerning that the Merchant Shipping (Ship to ship Transfers) Regulations 1999 remain in draft form. The lack of an effective regulatory framework inevitably means that that those engaged in STS activities lack proper accountability. It will also prove difficult to apply strict liability in the event of any breach of the draft regulations.

5.3 **Phase One/Three- The Approach/Transfer/Post-Transfer Phases**

The proposed mooring/unmooring arrangements assume the availability of tugs to assist with manoeuvring operations. However, MMS currently propose that tugs would only be on station for berthing/un-berthing operations. What provision exists for tugs to provide emergency handling of STS vessels if they become
separated for any reason, break free from their anchors, or drift without power as has happened elsewhere in the Forth in recent years?

The availability of tugs for emergencies, manoeuvres is further compromised if one takes into account that they could be locked in at their home base of Leith Docks at Low Water. MMS have consistently failed to provide assurances on how they would overcome these problems. MMS have also declined to confirm transit times for tug deployment, particularly from Leith at Low Water, or from other working areas upriver to the M1/M2 anchorages.

This is unsatisfactory and at complete variance with operational arrangements for hydrocarbons transfers of ships at permanent facilities elsewhere in the Firth of Forth such as the Hound Point Marine Terminal and Braefoot Bay Marine Terminal where dedicated tugs are in constant attendance, able to intervene immediately in the event of developing problems.

This implies that Fife Council and other stakeholders will require to accept reduced vessel handling and control capability which in turn must lead to lower safety standards at the proposed STS anchorages to those in force at permanent marine installations in the Forth.

5.4 Vessel Design

Fife Council is reassured to some extent that vessels involved will be double hulled but seeks further assurances that vessels involved will be subject to inspection by independent certifying bodies such as Lloyds’ or Det Norske Veritas (DNV) to ensure they comply with relevant standards set by IMO/MCA/FP for safety, maintenance and seaworthiness applicable to other vessels visiting port facilities in the Forth.

5.5 Proposed Vessels and Oil Types

Para. 3.2 Location and Brief Description of STS Transfer states that STS operations will involve Ultra Large Crude Carriers (ULCCs). However, in Para 3.3.1 ULCCs are omitted from the list of vessels potentially involved. As ULCC displacement can exceed 500000 m³ as well as having greater stopping distances than other tanker classes, does this indicate a higher degree of risk?

5.6 Hoses

Fife Council considers that the scenario for hose failure involving the loss of 137 m³ in a three minute period should be viewed as the most probable spill quantity released and not the more conservative 12 m³ estimated by MMS. However, Fife Council would contend that this scenario falls considerably short of a worst case event when even a minor collision between two STS vessels could result in a spillage involving several hundred, if not thousands of tonnes of crude oil.

5.7 Third Party Collision

Fife Council acknowledges that control of shipping movements in the Firth of Forth is exceptionally well managed under the auspices of Forth and Tay
Navigation Service. Nevertheless, the possibility of a catastrophic tanker collision involving a third party ship with STS vessels cannot be discounted, particularly in foggy conditions, leading to major environmental impact on both aquatic and terrestrial habitats, from any subsequent spillage.

5.8 Groundings

The risk assessment modelling for accidental grounding scenarios undertaken by Aquatera needs to be subject to independent evaluation by MCA or other competent authority.

5.9 Anchor Dragging

Risk assessment modelling for accidental anchor dragging scenarios undertaken by Aquatera also needs to be subject to independent analysis by MCA or other competent authority. Fife Council is concerned that Transco may not have been adequately consulted on the threat to the National Transmission 42” gas pipeline running slightly east of the proposed moorings.

5.10 Operational Spillage

There is an inconsistency here with MMS claiming that operational spills tend to be small, the majority under 1 m³, as a result of hose ruptures, failure of connections or tank overflow. In Para. 3.3.2 Hoses- they concede that the most likely spillage will be in the order of 12 m³.

5.11 Shipping Accident Spillage

However unlikely, the possibility of a shipping accident related spillage has to be considered including the loss of the entire cargo. Fife Council is unable to find the Risk Assessment Section 3.8 in the plan and therefore views with considerable scepticism, the claim by MMS that it has considered the likelihood of such occurrence.

Similarly, MMS has failed to properly evaluate the impact of such spills. In determining the likelihood and potential size of any oil spill Aquatera has leaned toward extremely cautious estimates of quantities involved. Fife Council feels spill modelling should have been based on the possibility of much larger spills of between 1000 and 60000 m³ which are more in line with credible estimates suggested by international guidance sources such as IPIECA.

However, even these figures do not represent the worst case scenarios as the capacity of a single VLCC could exceed 300000 m³. MMS insist potentially larger spills (1000-60000 m³) are not credible STS occurrences. Fife Council's view is that all tanker operations including STS activities increase risk of large scale spills especially in worst case scenarios such as collisions/groundings with the consequential loss of tank/vessel integrity.

5.12 Fire or Explosion
Fife Council is not persuaded that the different risk level suggested by MMS for STS vessels from fire or explosion is as high as 1 incident per 312/385 year period when they have already conceded in the previous paragraph that, typically, accidents of this nature occur once in every 200 years of tanker operations. In any event the completely random and unpredictable nature of such events means that such an occurrence could happen tomorrow.

We are extremely concerned by the lack of dedicated firefighting equipment for STS operations, both land based systems and on-board tugs, that is available at permanent facilities such as HPMT and BBMT.

We are aware that Lothian and Borders Fire Brigade has accepted the lead role with a trained cadre of firefighters for firefighting operations at sea. However, this response arrangement would take time to implement and is not an adequate substitute for firefighting tugs which can immediately bring waterborne systems including remotely operated foam/water cannons to bear on any fire outbreak on board a STS vessel.

MMS has a duty to set clear expectations and define responsibilities for front line responders at the local level, to ensure that they can deal with the full range of emergencies from minor incidents through to catastrophic events.

5.13 Table 3.1 Potential Oil Spill Causes from STS operations

Fife Council wishes to query, when describing weather operating parameters, why the wind speed upper limit is referred to in this table as 27> knots but elsewhere as 35> mph. The same value should be used throughout to avoid confusion.

It is also unclear who will be responsible for suspending STS operations when weather maxima are exceeded. During prolonged periods of severe weather we believe that those responsible for this decision will be under considerable commercial pressure to continue/resume operating.

An independent authority such as HM Coastguard should be able to request the suspension of STS activities when upper weather limits are exceeded.

Fife Council remains unconvinced at the adequacy of mitigation measures to prevent oil impacting along the Fife coast in the event of a potential oil spill arising from one of the causes described.

5.14 Table 3.2 Oil Spill Frequency During STS Operations

Fife Council requests that these data be subject to independent analysis.

5.15 Table 3.3 Synoptic Overview of Past, Present and Future Oil Spill Risks in Firth of Forth

Fife Council queries the comparison of possible future levels of risks with those that applied in 1998, the previous peak in oil activity. As STS operations were never previously conducted in the Firth of Forth this is an invalid comparison. We
suggest therefore, that the percentage increase of 33% to existing risk from STS is the figure which we should be concerned about.

5.16 Spill Probability Conclusion

Despite assurances from MMS and Captain R. Baker, Chief Harbourmaster, Forth Ports plc., both verbal and written, that a stand-by vessel would be constantly on-station to initiate immediate pollution response at the STS moorings, Para. 4 states that this craft will only be on-site at the commencement and completion of loading and moored at Burntisland Harbour for quick response at all other times.

Fife Council remains unconvinced that MMS and its contractors are adequately prepared and willing to commit sufficient resources to ensure a speedy, responsive and effective containment and recovery operation in the event of an oil spill.

Risk modelling of individual hydrocarbon product specifications is welcomed as the degree of impact on either the aquatic or land environment will vary depending on the properties and characteristics of the particular substance involved. It is acknowledged that time scales involved with spill diffusion will also vary. The admission that a substance such as a Group IV Russian Export Blend Crude Oil, a particularly heavy and persistent oil, could come ashore very rapidly (slightly over 2 hours) given the right combination of wind direction/ speed and tide state is a matter for serious concern.

5.17 Oil Spill Modelling

The revised accident scenarios, scale and frequency postulated by Aquatera do not appear to have been subject to independent analysis and verification by the permitting authority. Local Authorities are dependent on expert advice from bodies such as the Maritime and Coastguard Agency to assess the likely probability or scale of such occurrences.

Trajectory modelling of oil spills is another area where LAs have no expertise and again would have to rely on the MCA or other agencies to provide accurate predictions of where, when and in what quantity oil afloat was likely to come ashore possibly through the use of deterministic modelling programmes such as the Oil Spill Indication Survey(OSIS).

Stochastic modelling examples have also illustrated the potential impact on other areas of sensitivity in the Forth at potential risk on environmental, biological, recreational and commercial grounds. MCA should provide independent verification of Deterministic/Stochastic Spill Models by Aquatera as described in the Risk Assessment.

5.18 Receiving Environment

This section fails to refer to the Blue Flag beaches at Aberdour, Burntisland and Elie and other designated bathing waters at High Amenity beaches at Kinghorn, Leven and Largo Bay.
The Fife coastline forming the northern shore of the River Forth and Firth of Forth extends 90 km from Kincardine to Fife Ness. The Fife coastline and inshore waters of the Firth of Forth contain many areas of environmental sensitivity including designated coastal nature conservation sites. These include National/Local Nature Reserves, SSSIs, Wildlife Sites, SWT Reserves and a Special Area of Conservation.

The Firth of Forth has RAMSAR status and is also designated as a Special Protection Area. The Isle of May and Bass Rock have also recently been listed at Marine Extreme High Risk Areas (MEHRAs). In addition there are EC designated shellfish growing areas and inshore fisheries in Fife’s coastal waters mainly around the East Neuk area.

5.19 Mechanical Containment and Recovery

MMS openly acknowledges that depending upon the category of hydrocarbon product and its spreading and thinning characteristics that there are few coastal sites along the Fife Coastline where containment and recovery measures can be employed. Similarly, it concedes that little in the way of large scale protection will be possible to protect the extensive sensitive areas within the Firth of Forth.

This is a wholly unacceptable admission by MMS as Fife Council would hold any persons/organisation causing pollution to be entirely responsible for its clean-up and the restoration of any coastline affected to its original condition.

5.20 Containment

There is a further reference in this para. to the BESL pollution response vessel not being constantly on station as promised but only being present during initial start-up and topping- off operations and at all other times being on stand-by at a close by harbour which presumably refers to Burntisland. Again Fife Council finds this arrangement completely unacceptable for rapid and effective response to any spills that might arise.

5.21 Figure.4-1 Single Vessel Side Sweep system

Fife Council notes that the response vessel will only be equipped with a 10 tonne deck tank recovery tank which we believe offers insufficient capacity for waste oil recovered following any spill. Returning to base to empty the tank would also allow further diffusion of any oil spilled to take place thereby exacerbating the problem.

We would dispute the description in the last para. of the Firth of Forth as an enclosed and confined waterway and would therefore question the efficacy of the containment /recovery strategy outlined.

5.22 Recovery

We remain concerned that as the main STS transfers are likely to involve Group IV Russian Export Blend Crude Oil that equipment to contain and recover
significant quantities of this highly persistent oil in the event of a spill is not available in sufficient quantity in the Firth of Forth to enable rapid and efficient recovery.

5.23 Waste Disposal

We would question the assumption that Shanks and McEwen can dispose of oiled materials in any quantity. The MCA will be able to confirm that this issue continues to tax the minds of emergency planning officers, waste management officers and pollution control specialists alike. In the absence of a detailed national waste management strategy, claims such as this do not provide local authorities whose coastline has been impacted by any spill with any reassurance in this regard.

5.24 Final Disposal

The absence of a policy for the acceptance of oiled solids into landfill and the assumption of approval by SEPA, along with the real possibility of this being regarded as Special Waste, makes this proposed disposal arrangement highly suspect and is an area requiring further consideration by all parties.

5.25 Containment and Recovery

Step 6- Waste Disposal- Query the assumption that the local authorities will be responsible for the disposal of oil and oily waste.

5.26 Appendix G- Additional Consultation( MMS Responses to SNH Consultation Comments)

Page 64- General Overview

Fife Council wishes to challenge the assertion by MMS that the Firth of Forth is only one of a number of estuarial locations around the UK containing controlled harbour areas within which the MCA would prefer ship to ship oil transfers to take place. It is inferred by MMS that STS activities would be welcome at these other locations.

This is a misrepresentation of the current situation as Fife Council has ascertained that only in Scapa Flow would there be active support for the type of STS operations planned for the Forth of Forth. All other local authority areas canvassed by Fife Council have expressed their complete opposition to STS on a swinging anchor basis as too high risk an activity to tolerate in sensitive inshore waters.

Page 65- STS Extending Existing Port Operations

Again MMS distorts the reality of existing oil transfer operations at fixed installations in the Firth of Forth which have fire and safety facilities and pollution control resources immediately available. MMS differentiate between STS activities alongside jetties (which Fife Council has not opposed) and STS in
coastal waters (which Fife Council is opposed to) but then imply that these are comparable activities. Fife Council maintains that these are distinct operations with different levels of associated risk with the former method posing a lesser threat.

There is a much reduced risk when vessels are tied alongside a jetty where evacuation arrangements, firefighting, emergency shutdown and pollution response measures can be brought to bear than at a free floating anchorage. Additionally, there are recovery systems in place at the permanent facilities situated around the Firth of Forth to capture harmful emissions. MMS has failed to give assurances that technical solutions have been found for effective vapour recovery/balancing during STS operations.

Para. 2- MMS suggest that of the 37 million m³ of oil and hydrocarbon products exported from the Firth of Forth each year that 24 million m³ of crude oil is transferred in open water. This is also disingenuous as the bulk of existing transfers occur at the HPMT involving Forties blend crude, a light oil which, if spilled into the aquatic environment, would cause much less damage than Group IV REBCO heavy fuel oil which will form the bulk of the proposed STS transfers.

There is the further consideration that the permanent installations involved where hydrocarbons transfers take place provide considerable revenue to the local authorities concerned through business rates, the provision of permanent local jobs and enjoy a successful environmentally responsible reputation. In any Risk v Reward equation local communities derive considerable benefits, both direct and indirect, from the presence of the oil majors at the permanent installations which would not be the case with transient STS operations.

MMS also claims that where existing equipment within the Forth is unsuitable for recovery and handling of particular materials, that provision has been made for new equipment to be purchased. Fife Council has seen no evidence of any such purchases and contends that the existing counter-pollution resources available under the auspices of the Clearwater Forth plan is unsuited to the recovery of heavy fuel oil types such as REBCO.

Page 66 - Overall Approach to Environmental Studies

Para 2- MMS claim that the proposed STS operations present only limited alterations to the oil handling activities in the Firth of Forth. Given the enormous scale of this undertaking the size of vessels involved and the substantial risk to the fragile but diverse marine and coastal environments in the Firth of Forth, Fife Council does not accept that this undertaking falls within the description of only "limited alterations".

Fife Council also challenges the claim that "ship-to-ship operations in themselves are no more risky than existing oil transfer operations further up river". In its own risk assessment of this proposed undertaking MMS has accepted that there will be a 33% overall increase in risk.

Page 68 – MMS repeat the assertion that there are only small material differences between risks presented by existing oil transfers and proposed STS
operations which again Fife Council would dispute. There is also a suggestion that specialised equipment necessary for dealing with a fuel/oil spill will be made available but to date Fife Council has seen no evidence of such provision.

Page 70 – Environmental Impact Assessment and Oil Spill Risk Assessment

Para 3- MMS repeat the claim that STS operations are no riskier than jetty-based operations. There is a total lack of consistency here as this view differs from the conclusions in their earlier risk assessment which accepts an increased risk from STS activities. Neither does Fife Council accept the claim that the proposed moorings in the Firth of Forth make any vessels involved less exposed to shipping risks such as collision and grounding than permanent operational bases in the Forth.

The claim by MMS that the oil spill risk assessment deliberately focused on an assessment of incidents rather than consequences is puzzling. Fife Council has uncovered STS incidents such as the M/T Mega Borg spillage which caused a massive spillage of oil (65 000 m³) into the Gulf of Mexico off Galveston in 1990 which does not feature anywhere in the Risk Assessment case studies prepared by MMS.

Page 71 Para 6 – MMS claim that similar STS operations have already been approved in other areas of the UK equally sensitive from a wildlife and tourism standpoint and refers specifically to the Cromarty Firth, Sullom Voe and Scapa Flow. Fife Council disputes this claim as STS operations similar to those proposed in the Firth of Forth have never been permitted by the harbour authority in either the Cromarty Firth or Sullom Voe.

It is only in Scapa Flow where the Harbour Authority has additional capacity that it is willing to accept STS operations on a free floating swinging anchor under relevant conditions. There are considerable operating differences in Scapa Flow to the Firth of Forth. Firstly, there is appropriate infrastructure with assured tug cover, fire-fighting safety and pollution response resources immediate availability and no threat of tugs being locked in as at Leith.

The Harbour Authority for Scapa Flow is the local authority, Orkney Islands Council. This ensures a number of benefits to the local communities as it provides a direct revenue stream to the council, tighter control over STS operations and pollution risk. As a result STS is generally welcomed in an area where there has been a downturn in oil throughput in recent years.

6. CLEARWATER FORTH OIL SPILL CONTINGENCY PLAN – FORTH PORTS NOV. 2005

6.1 The following comments by Fife Council pertain to aspects of the revised Clearwater Forth Oil Spill Contingency Plan prepared by Forth Ports plc:

a. Action Checklist
Is there a potential conflict here with pollution control resources earmarked for deployment at spills at permanent facilities such as Hound Point Marine Terminal and Grangemouth Docks also assumed to be available for spills that have arisen in the course of STS transfers?

There is also concern that the bulk of existing counter-pollution resources available in the Firth of Forth, declared as assets under the CWF plan, may be of the wrong type to be of any use in interdicting a spill involving heavy oil products such as Russian Export Blend Crude which would require to be recovered principally by vacuuming techniques.

Currently the majority of equipment stockpiles maintained by different organisations are geared primarily to containing, recovering and cleaning up Forties blend crude, the primary throughput in the Forth, which being of much lighter consistency will evaporate more quickly with residual oil being more amenable to recovery by conventional skimming techniques.

Heavy fuel oils are exported from the Grangemouth refinery up river but not in the quantities proposed by Melbourne Marine Services and HFO cargoes are not loaded by ship to ship transfer method. Grangemouth Refinery underwent a change of ownership in 2005 with new owners Innovene replacing BP but this has had no significant effect on the range and quantities of products released from this establishment or working practices for the loading of hydrocarbon cargoes, at least in the short term.

MMS have failed to confirm whether counter-pollution equipment available in the Forth under the auspices of the Clearwater Forth Oil Spill Contingency Plan or the STS Oil Spill Contingency Plan is of the correct type and specification and fit for purpose, is available in sufficient quantities, and will be provided by the owners of the equipment in the absence of binding contracts with other Port Operators or Forth Ports.

b. Response Strategy Guidelines -

The Firth of Forth enjoys international, European and national environmental sensitivity designations being both a Special Protection area and RAMSAR, and containing areas of outstanding natural beauty, SSSI, special areas of conservation and extensive vulnerable seabird and sea mammal populations.

Areas most at risk from an oil spill along the Fife shoreline in the vicinity of Largo Bay comprise Zone 1/Zone 2 near shore waters/foreshore where dispersant use should be avoided. The primary coastal defence would be deflection booming with inflatable booms deployed as necessary.

However, as there are insufficient boom stocks available locally to provide the level of protection required extensive areas of amenity beaches and environmentally sensitive coastline would be placed at risk.

The use of dispersant spraying as a counter-measure is most unlikely as consent of the Scottish Executive Environment and Rural Affairs Department (SEERAD) would need to be obtained. Approval for the use of dispersant must
be applied for, in water depths of less than 20metres and waters extending 1nm from the 20metre contour.

No indication is given of the response times for mobilisation/deployment times to the scene of the spill by Briggs Environmental Services Ltd (BESL) as the Tier II contractor - from seaward and landward directions. As BESL is also Fife Council’s Tier II Response Contractor the local authority needs to be assured that the company has sufficient resources to implement seaborne containment/recovery and coastal protective operations simultaneously and within acceptable time scales.

Similarly, no reference is made to arrangements for storage and disposal arrangements of any oil or oiled waste recovered in the event of a spill in compliance with environmental and waste management regulations. Any oil solids recovered from the foreshore or sea will probably be treated as special waste and would require to be disposed of in a site licensed to accept hazardous waste by a carrier approved by SEPA and not be sent to landfill.

This is a logistical problem of potentially massive proportions that operators/developers consistently fail to address when preparing contingency plans. The local authority has no statutory responsibility for co-ordinating the disposal of oil waste and detailed discussions are required with SEPA in order to identify temporary, intermediate and final storage sites.

Fife Council does not accept that adequate stocks of inflatable boom are available locally. Given the enormous lengths of coastline to protect (potentially 30/40 km) where deflection/diversionary booming would be the only effective safeguard there is insufficient availability of boom stocks to provide the degree of protection required especially with a Group IV Russian Export Blend Crude oil type. Nor would there be enough time or sufficient physical resources to undertake deflection booming of sensitive coastline and estuaries on the scale required within the Firth of Forth.

There is a presumption by MMS that SEERAD will reply favourably to any request for a standing consent to carry out dispersant spraying in the deep water in the vicinity of the M1/M2 moorings but this has never been subject to process of approval.

MMS have failed to give a satisfactory response to the question of mobilisation times from seaward and landward directions under Tier I and Tier II response arrangements. Response time will only be instantaneous on board the STS vessels- any response on the sea or land would be greatly delayed. Similarly, MMS has failed to explain adequately what arrangements they have planned for containment, recovery and final disposal of oil on the water, the success of which operation would be entirely dependent on favourable weather conditions. The assurance that it would be disposed to tankers or barges is also lacking in detail.

c. **Spill Assessment and H & S Guidelines**

It is suggested that in the initial stages of any spill, slick tracking would be carried out using the duty tugs. No assurance is provided that tugs will be permanently
alongside vessels during STS operations or that a pollution response vessel can deploy quickly from its operating base at Burntisland to provide a rapid response in the event of a spill.

What guarantees can Forth Ports and operators give for the availability of tugs particularly when there are likely to be competing demands for the limited number of these vessels in the Forth at primary locations such as Hound Point and Braefoot Bay?

In the event that they are not alongside during STS activities what response times would be involved in deploying tugs from Leith particularly if they are locked in or normal working areas upriver such as HPMT or BBMT to the M1/M2 anchorages? Also, what provision is there for tugs to provide emergency vessel handling in order to regain control of STS vessels if they become separated for any reason or break free from their anchors and drift without power as has happened elsewhere in the Forth in recent years.

Presumably MCA and the Harbour Authority would be responsible for enforcing safe methods of working by the operators in order to protect the health and safety of its employees and other water users including local fishermen and recreational sailors in the area perhaps through the establishment of marine exclusion zones particularly during pumping operations.

MMS claim to be able to guarantee that sufficient resources will be available to manage STS transfers. However, they have failed to provide assurances regarding the need for tugs to be available throughout all STS operations as is currently the case at permanent facilities such as Hound Point Marine Terminal. They have also failed to confirm mobilisation times for tugs. Nor is there any indication of the deployment time for the Briggs Pollution Response craft from Burntisland.

Fife Council is not persuaded that these arrangements are sufficiently robust to respond quickly to deal with any vessel handling or pollution problems that may arise. STS vessel based equipment for pollution response provides only a partial solution.

d. Equipment Resources

The presence of a support craft during the start-up and completion of STS operations is mentioned along with a Tier II response Service Level Agreement with Briggs Environmental Services Ltd. Fife Council believes this vessel should be permanently on station during STS operations if an efficient and effective response is to be mounted to unforeseen pollution events.

The Tier II response by Briggs would take time to implement and there is no detailed information on readily accessible pollution control resources to ensure immediate containment and recovery for incidents involving a more limited Tier I incident.

Fife Council acknowledges that there may be sufficient resources on board mother/daughter ships to deal with shipboard minor spills. However, it is still
unconvinced that the Pollution Support Craft can respond within an acceptable time scale to spills. The local authority is not reassured by statements by MMS that the support craft will be on standby during startup and completion of STS transfers and on short notice deployment during transfer operations. The council seeks nothing less than a constant presence during transfer operations.

e. Priority Sensitive Areas - Firth of Forth Harbour Area

The Firth of Forth Harbour Area in addition to being designated as a Special Protection Area/RAMSAR site contains a number of Priority Protection Areas. Largo Bay has been designated as a Group A1 location indicating acute sensitivity on a number of counts including a nationally important bird site, national nature reserve and a habitat of key vulnerability to oil pollution.

The outer edge of the near shore waters of the Largo Bay Priority Zone is less than 2km from the M4/5 anchorages where the STS operations are planned to take place.

Fife Council maintains that the planned anchorage is situated too close to fragile coastal habitats such as the environmentally sensitive shoreline of Largo Bay.

Appendix 1 - Compensation and Legal Matters –

The experience of cleaning up oil spills in other coastal areas of the UK in recent years confirms that the local authorities involved have encountered significant difficulties in attempting to recover costs incurred by them or to obtain compensation where appropriate.

If STS operations were to go ahead stakeholders, harbour area users and coastal local authorities would need operators to demonstrate that they had adequate insurance cover to meet all liabilities arising from an unforeseen oil spill particularly cover for public liability.

The legal framework governing the strict liability of tanker owners for compensating potential claimants of pollution including local authorities is defined in the International Convention on Civil Liability for Oil Pollution Damage 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

The provisions of the Protection and Indemnity (P & I) Club as insurers of the tanker owners, the role of the International Tanker Owners Pollution Federation Ltd. (ITOPF) and the International Oil Pollution Compensation Fund (IOPC) would need to apply throughout.

Presumably legal obligations on the operator would be enforced by the Harbour Authority and MCA although STS activities would also come within the control of other regulatory bodies such as SEPA and LA Environmental Health services.

Fife Council would also seek assurance that relevant parties had been properly indemnified against liability, including costs and legal expenses, arising out of the negligence of the operators, its employees, sub-contractors and agents.
The IOPC Fund is intended to offer compensation for spills involving persistent oil and Fife Council needs assurances that other sources of compensation would be available for non-persistent oil types but which could still cause massive ecological, environmental and economic damage in even the short to medium term.

Local authorities manage the response to maritime oil spills and subsequent shoreline clean-up on a purely voluntary basis under Section 138 of the Local Government Act. There is no specific central government funding for these activities with councils having to rely instead on the wholly unsatisfactory "polluter pays" principle as the basis for attempting to recover costs.

Following the response to the Erika and Prestige oil spills which involved HFO types similar to Russian Export Blend Crude Oil (REBCO) it was necessary to increase the International Oil Pollution Compensation Fund (IOPC) as there were insufficient funds to meet the total compensation claims submitted by the French and Spanish Governments and other parties.

Many of these claims involved repayment for direct costs incurred for the provision of labour and equipment in clean-up operations and indirect costs through loss of tourist revenue, and the economic impact on commercial interests such as fisheries, marine sports activities etc.

A similar event in Fife coastal waters would in all probability produce a situation, depending on the size of the spill, where costs involved would not be fully recoverable by the local authorities and others affected from insurance and compensation fund sources due to inadequate funds.

MMS has declined to comment on concerns regarding the inadequacy of funding sources to provide reliable recovery of costs for pollution clean-up or the provision of compensation to local authorities, businesses and individuals affected by the impact of any spill. Fife Council insists that these issues are properly addressed in any consideration of approval process as adherence to the "polluter pays" principle as a mechanism for cost recovery has proved to be unreliable and hopelessly ineffectual.

Fife Council reserves its rights, in the event of approval being granted, to seek recovery of all costs incurred by it in relation to the above matters by legal action against all parties involved in the approval process.

7. **ENVIRONMENTAL IMPACT ASSESSMENT – AQUATERA REVISION 2 NOVEMBER 2005**

7.1 The following comments by Fife Council pertain to aspects of the revised Economic Impact Assessment prepared by Aquatera Environmental Consultants on behalf of MMS:
a. Introduction of Alien Species/Discharge of Ballast Water

The major operating difference between Scapa Flow and the Firth of Forth is the requirement under Orkney Islands Council bye-laws for ships involved in STS oil transfer operations to discharge ballast water in open waters at the former location. This necessitates receiving vessels shuttling back and forward from the Flow to sea at intervals to perform this operation, considerably adding to the time required for each transfer.

We believe that as this adds significantly to operating costs, especially vessel charter times, it acts as a financial disincentive to operators such as MMS to undertake STS activities in Scapa Flow. Operating in the Firth of Forth where similar restrictions would not apply clearly offers considerable cost-savings.

We can only conclude therefore that conducting STS transfers in the Firth of Forth in preference to Scapa Flow is solely a commercially based decision designed to reduce transfer times for any vessels involved.

The possibility of foreign species being discharged into local waters causing harm to indigenous species cannot be discounted as the mother vessels arriving with ballast in the harbour area would require to discharge ballast water into the marine environment of the Firth of Forth. On current projections this would be in excess of 2million m³ per annum.

MMS have failed to give assurances that alien species will not be introduced into the waters of the Firth of Forth. Fife Council accepts that there is greater water exchange and tidal effect potential in the Firth of Forth than Scapa Flow.

However, if the discharge of ballast waters is considered to be an environmentally and ecologically unsafe practice in Orcadian coastal waters it should not regarded as any more acceptable in the shallower waters of the Firth of Forth.

b. Other Pollution Pathways

Other pathways of potential pollution not referred to in the STS OSCP and proposed CWF amendments but described in the Environmental Impact Assessment (EIA) such as increased background noise levels from pumping operations and ship engines, unauthorised bilge flushing, increased light from anchored vessel floodlights, loss of visual amenity across seascape, and odour emissions from volatile organic compounds vented from tanks need further evaluation.

c. Air Quality/Emissions to Atmosphere

It is clear from the EIA that there will be significant emissions from the STS activities which will affect local air quality and have the potential to create odours which, regardless of modelling, could be detected on shore particularly from heavy crude oil. These could include harmful vapours such as H2S and Benzene, a known carcinogen.
Previous complaints from the public concerning emissions from other establishments, such as the Hound Point and Braefoot Bay marine terminals prior to installation of vapour recovery systems, indicate these were detected at some distance from both plants and does not seem to accord with the EIA claim that odours from STS activities will be imperceptible on shore.

It is anticipated that Pollution Prevention and Control Regulations consent would be required for STS activities by SEPA and that this would determine whether or not operations will comply with the Statutory Air Quality Objectives or be refused consent. We would wish to ensure this application process is followed as a minimum.

d. Noise Pollution

The information provided within the EIA is at best simplistic and could be seen as misleading. A full noise assessment of actual operations should be provided by a suitably competent Noise Consultant detailing the noise impact of all operations. Any assessment should include frequency analysis and cover STS transfer operations as well as associated vessel activities.

We would suggest, in addition, that should MCA consider acceptance of the proposals in any shape or form that they conduct its own Environmental Impact Assessment to consider hazard consequence of the complete range of associated risks as it is not practicable for Local Authorities to carry out this exercise in-house to the level required.

MMS have not disclosed if STS proposal is to be subject of a detailed application under PPC Regulations and what further environmental impact assessment work will be required to ensure compliance with Statutory Air Quality and Noise Pollution objectives.

e. Impact on the Fife Economy

Fishing and tourism are significant elements of the local economy and the quality of the environment along the North Forth Coastal zone, including the East Neuk are a key element in the promotion of Fife as a place to live, work, play and invest. It is inevitable, therefore, that a major oil spillage would have a direct impact on these industries and indirectly affect the Fife economy as a whole.

Fife Council does not agree that STS is calculated to impact positively upon the Fife economy. Instead it views STS activity as incompatible with economic and environmental interests in the area, both along its coastline and even into the hinterland, that could suffer adversely in the event of a sizeable oil spill.

f. Job Creation/Sustainability

The economic benefits in the Firth of Forth claimed by Aquatera in (the EIA Section 6.7) from the proposed STS operations are based on the creation of a total of 15.4 FTE jobs of which 13.4 would be locally based. The report suggests that typical employment multipliers of 2.5 could be applied to the marine handling operations, based on Scottish Executive’s Economic Multipliers indices.
Whilst the application of such a multiplier is thought to be optimistic, it is suggested that this would result in a net economic benefit of £4 million to the economy in the Firth of Forth. Based on the information supplied, this is considered a reasonable estimate of the potential economic impact, if the jobs estimate is valid.

Fife Council does not dispute the direct jobs figure claimed by MMS but suggests that these would not all be created in Fife but spread across the entire region with only minimal benefit to individual local authority areas.

g. Tourism

In 2005, approximately 6,000 people were directly employed in tourism in Fife, which generated some £200 million spending in the local economy. North East Fife is heavily dependent on tourism as a major source of local employment in what is essentially a rural area with few alternative sources of jobs.

A major oil spill would have considerable impact on the tourism industry in Fife, since many visitors are drawn by its unspoilt environment, heritage and golf. Extensive tourism interests along its coastline would be imperiled by any spillage including the increasingly popular Fife Coastal Path, links golf courses, caravan parks and historic East Neuk fishing villages, popular with both holiday-makers and day-visitors.

There is also a significant number of hotels and guest-houses in the area providing holiday and short stay accommodation along with various visitor indoor and outdoor attractions. To the west and east of Largo Bay there are High Amenity beaches at Leven, and Earlsferry and a Blue Flag beach at Elie used by bathers and water sports participants including sailors, wind surfers, divers, water-skiers, canoeists, fishermen etc.

There has been significant investment in infrastructure to support the East Neuk economy including new pontoons for visiting yachts at Anstruther Harbour along with other regeneration measures in the area to create a sustainable economy.

The Firth of Forth has also seen a growing increase in the number of cruise liners visiting this area in recent years which brings substantial benefits to ports of call and local visitor attractions. There is also a ferry service which operates between Rosyth and Belgium with plans for development of further routes to other European destinations.

Fife Council rejects the claim by MMS that STS would not have any adverse effect on tourism interests. Apart from increased noise pollution, odour emissions and visual impact there are serious concerns over bathing water quality and the ever present threat to beaches and fragile coastal habitats from pollution.

h. Fishing

Although, the scale of commercial fishing in Fife has declined dramatically over the past 20 - 30 years, it still provides 60 vital jobs in the coastal villages of Fife.
primarily based on the inshore fishing fleets at St. Monans and Pittenweem. There is also an established Fish Market at Pittenweem trading in catches of cod, haddock, herring, mackerel and flatfish.

In addition, Largo Bay remains an important breeding ground for a range of shellfish including clams, prawns and lobsters supplied to restaurants in the region as well as being exported abroad.

A major oil spill would have an adverse effect on the remaining fishing industry, and it is recommended that additional evaluation be undertaken to establish the effect of a major oil spill on the fishing industry and breeding grounds in the area.

i. Protecting Wildlife

There are numerous seabird and sea mammal populations at risk in the Firth of Forth particularly the Outer Forth which has been designated as a Special Protection Area. The Largo Bay and East Neuk area contains breeding grounds and wintering areas used by indigenous and migratory bird species.

Offshore islands such as the Isle of May to the east of the proposed STS anchorages contain vulnerable wildlife populations of common and grey seals along with various types of waders, wildfowl and seabirds.

Fife Council thinks it inconceivable that fish and shellfish stocks, seabird and sea mammal populations will not be placed under increased risk of pollution, injury or a worse fate through oiling, loss of habitat or diminished food supplies in the event of spill. MMS has also failed to prepare a detailed plan to ensure the care and welfare on a potentially mass scale of any wildlife at risk including their rescue, recovery and treatment in the event of a spillage.

8. CONCLUSIONS

8.1 The absence of formal planning controls for a strategic venture of this magnitude is a completely unacceptable and untenable position and we call for its refusal as it should not be approved in law.

8.2 Having studied the oil spill contingency plans, environmental impact and risk assessments and supporting documents in detail, Fife Council is not persuaded that the proposed STS oil transfer activity is intrinsically safe at a location so close inshore and that further potential for marine accidents and consequential spills could arise particularly during mooring, transfer and unmooring phases.

8.3 It is also concerning that the final version of the Marine Pollution, The Merchant Shipping (Ship to Ship Transfers) Regulations 1999, still remain only in draft form. However, given the vast scale of the proposed STS activity in the Firth of Forth, Fife Council is of the view that the proposed regulations lack robustness and that associated safeguards would still prove insufficient.

8.4 The potential for an oil spill is significantly increased from existing levels and the effects of such a spillage, particularly a persistent Group IV substance such as
Russian Export Blend Crude Oil would have a devastating effect on our tourism and fishing industries. The damage to Fife’s sensitive coastal habitats and wildlife would also be incalculable and long lasting.

8.5 Fife does not anticipate any economic benefit from the proposed STS operations and notes that even a minor spill could cost the council millions of pounds in clean-up costs as well as extensive loss of revenue to Fife’s fragile coastal economy before national or internationally agreed levels of compensation were awarded.

9. RECOMMENDATION

9.1 Given the concerns about potential damage to vulnerable environmental and vital economic interests along the Fife Coastline from an unforeseen oil spill and a lack of binding assurances concerning appropriate safeguards and preventive/mitigatory measures by the operators and statutory agencies Fife Council wishes to register its strong opposition to this proposal.

9.2 Fife Council recommends in the strongest terms that the MCA should either refuse the application, or determine that the proposed amendments are not appropriate for dealing with oil pollution incidents which may occur in the area in which the harbour authority or operator has jurisdiction or exercises responsibility. Indeed, Fife Council considers that the MCA is legally bound to do so in order to properly comply with the 1994 regulations.

Submitted by Dr. R. McLellan, Head of Transportation Services, in his capacity as Deputy Head of Pollution Response, following consultation with Environmental Health, Waste Management, Economic Development, Law & Administration, Emergency Planning and Transportation functions of Fife Council.

EPU/PEP/3/17
28th April, 2006
Mr Richard Hough  
Assistant Clerk to the Public Petitions Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

Date  
18 October 2006

Your ref

Our ref  
ph.oct.hough.stw.kr

Dear Mr Hough

CONSIDERATION OF PETITION PE956

I refer to your letter addressed to the Chief Executive dated 2 October 2006 inviting comments and views on issues identified and raised in the above petition to the Scottish Parliament by Mrs Mary Douglas.

On 9 August 2005 The City of Edinburgh Council initially considered the proposals to introduce Ship to Ship oil transfers in the Firth of Forth and the decision was “to oppose the proposals on the grounds that it would increase the risk of pollution in the Firth of Forth and had the potential for serious consequences should a spill occur”. Again in 2006 the Maritime and Coastguard Agency (MCA) on behalf of the Ministry of Transport re-issued revised consultation to all stakeholders and again on 23 May 2006 this Council re-affirmed its previous decision to oppose these proposals. I have enclosed with this letter a copy of the report dated 23 May 2006 which includes the detailed response provided to the MCA on the proposed ship to ship oil transfer at anchor in the Firth of Forth.

Following an approach from Fife Council, the City of Edinburgh Council on 10 October 2006 again re-emphasised its continued opposition to ship to ship transfers of oil and agreed to work jointly with Fife and East Lothian Councils on possible legal action to challenge this activity going ahead.

The City of Edinburgh Council’s opposition to this proposal centres principally on the increased potential risk of pollution in the Firth of Forth and the serious consequences for the Forth should any spill occur especially in light of the intention to transfer Russian Export Blend Crude Oil (REBCO). REBCO is known to be a heavy and persistent oil which would have very serious consequences for any environment should a spillage occur. The Firth of Forth is designated an international RAMSAR status and is also designated as a Special Protection Area. The Isle of May and the Bass Rock are listed as Marine Extreme High Risk Areas (MEHRAs) and the coastline and inshore waters of the Forth include areas of environmental sensitivity and designated coastal nature conservation sites.

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HEAD OF SERVICE, COMMUNITY SAFETY  
Natalie Hoy, Acting Environmental Health Manager  
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stephen.walker@edinburgh.gov.uk
This Council, together with other Local Authorities around the Firth of Forth are partner agencies in the Clearwater Forth response scheme which is a contingency arrangement maintained by Forth Ports plc for responding to oil and chemical pollution incidents in the Firth of Forth. Under oil spill contingency arrangements Local Authorities are expected to manage beach clean-ups following an oil spillage and as currently no direct funding is available to prepare for such an eventuality, Local Authorities around the Forth do not retain counter pollution equipment such as booms or specialised oil recovery equipment.

Although it is suggested that this operation could add an estimated eight million tonnes to the Forth Ports operation, the economic benefits from the proposed ship to ship operations to the City of Edinburgh and neighbouring authorities are viewed as negligible especially when spread across the entire Forth region. Local Authorities are, therefore, being asked to accept a large increase in risk and be expected to increase their preparedness and response commitment without receiving any direct support or benefit from this proposal. It should be stressed that small spillages would have very serious implications for coastal habitats in the Forth and could result in Local Authorities having to face substantial initial clean-up costs before agreed cost recovery commenced.

As stated earlier the City of Edinburgh Council has agreed to work jointly with Fife and East Lothian on developing a possible legal challenge to this proposal. One of the main legal questions being considered is the legality of these proposals in view of the European Court Justice Ruling which found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law to ensure the protection of sensitive coastal and marine habitats such as the Firth of Forth. As the MCA have now issued Forth Ports plc with a “minded to approve” letter, clarification is needed from the MCA on what they consider their duties were under the Conservation (Natural Habitats etc) Regulations 1994 and in what way they had complied with these Regulations. The MCA is seen as a “competent authority” in terms of these Regulations but it would appear that the MCA have placed responsibility for compliance under these Regulations on Forth Ports.

In addition to possible questions about the MCA proposed approval, it is not clear to what extent Forth Ports have also considered their duties under the 1994 Regulations, and how they fully intend to fulfil their general duty. Furthermore, Forth Ports will require to demonstrate a lack of bias in the approval process as clearly they have a perceived conflict of interest between acting as approval authority and beneficiary.

It should also be noted that The Merchant Shipping (Ship to Ship Transfers) Regulations 1999 still remain in draft format and this Council considers Regulation of such an activity to be essential ahead of any such transfer operation being given approval.

This Council remains firmly opposed to this proposal and I trust this reply together with the enclosed report provides your Committee with the views of this Council on the proposed Ship to Ship oil transfer in the Forth.

Yours sincerely

Stephen Walker
Acting Environmental Health Manager

Enc
Proposed Ship to Ship Transfer in Firth of Forth

Executive of the Council

23 May 2006

Purpose of report

1 To advise the Council of a further consultation by the Maritime and Coastguard Agency (MCA) on the revised and amplified oil spill contingency plan produced by Forth Ports Plc in response to proposals by Melbourne Marine Services to introduce ship to ship oil transfers in the Firth of Forth.

1.2 Members of the Executive are requested to note and approve the comments provided on this consultation.

Main report

2 Melbourne Marine Services propose to introduce ship to ship oil transfers at anchorages approximately 3.4 nautical miles south east of Methyl in the Firth of Forth which will involve Very Large Crude Carriers (VLCC) or Ultra Large Crude Carriers (ULCC) and shuttle tankers.

3 Once at anchor the mother ship would receive consignments of oils and hydrocarbon products including Russian Export Blend Crude Oil (REBCO) from a flotilla of daughter ships transporting the cargos from Russian marine terminals in the Barents Sea and the Baltic sea.

4 As a stakeholder in the Clearwater Forth Oil Spill Contingency Scheme The City of Edinburgh Council has been consulted by the MCA to assess the implications of Forth Port's revised and amplified plan for ship-to-ship transfer of oil carried as cargo within 'Forth Port's' harbour authority area which has a number of designated and sensitive nature conservation areas and sites. This consultation is therefore being conducted in line with the Cabinet Office Code of Practice on Consultation.
5 Under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, the MCA must consider Forth Ports proposed amendments to the Forth Oil Spill Contingency Plan and be ultimately satisfied with the proposed amendments before any permit for Ship-to-ship transfer in the Forth can be granted.

6 The MCA and the Secretary of State for Transport has been advised of the Executive's decision of 9 August 2005 to oppose the proposal on the grounds that it increased the risk of pollution in the Firth of Forth and had the potential for serious consequences should a spill occur.

Recommendations

Members of the Executive are requested to note and approve the comments provided in response to this consultation (Appendix1).

Mark Turley
Director of Services for Communities

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The City of Edinburgh Council Response to MCA Consultation on Proposed Ship to Ship Transfers of Oil in Firth of Forth

1. Introduction

As a stakeholder in the Clearwater Forth Oil Spill Contingency Scheme the City of Edinburgh Council has been consulted by the Maritime and Coastguard Agency (MCA), on behalf of the Minister of Transport, regarding proposals by Melbourne Marine Services to conduct ship to Ship (STS) transfer of crude oil and hydrocarbons in the Firth of Forth.

The City of Edinburgh Council – Position Statement

On 9 August 2005 The City of Edinburgh Council considered the proposals by Melbourne Marine Services to introduce ship to ship transfers in the Firth of Forth and their decision was “to oppose the proposal on the grounds that it increased the risk of pollution in the Firth of Forth and had the potential for serious consequences should a spill occur”.

The opposition to STS in the Firth of Forth by Edinburgh is consistent with the decisions taken by Fife and East Lothian Councils.

2. Consultation

This report is The City of Edinburgh’s reply to the consultation and is in response to the following documents provided by the MCA in the revised consultation:

- STS OSCP for Oil Transfer Operations in the Firth Of Forth – Nov 2005
- Revised Clearwater Forth Oil Spill Contingency Plan – Nov 2005
- Assessment of Oil Spill Risk from STS Operations – Revision 3, 2005
- Environmental Impact Assessment of STS Operations – Revision 2, 2005
- Scottish Natural Heritage response – Dec 2005

3. Legal Concern

It is of concern that the Merchant Shipping (STS Transfers) Regulations 1999 still remain in draft format. A proper regulatory framework must be provided as accountability in this operation is essential.

The European Court Ruling on 20 October 2005 found against the United Kingdom for failing to transpose the EU Habitats Directive 92/43/EEC correctly into UK law. The proposed introduction of STS transfer in the Firth of Forth and the lack of a current legal framework may conflict with the Habitat Directive and its transposed directives into Scottish Law. It is therefore for the MCA to have due regard to the implications of the Habitats Directive before reaching a decision on STS Transfers in the Forth.
4. Melbourne Marine Services STS Oil Spill Contingency Plan for Oil Transfer Operations – Firth of Forth

The City of Edinburgh Council’s comments and observations are listed below:

1. The Approach / Transfer /Post- Transfer Phases

Availability of tugs to assist with all manoeuvring operations would seem to be only available for berthing and un-berthing operations. No dedicated provision will therefore exist should any emergency occur in the Forth during STS operations. This procedure is unacceptable and is at variance with operational arrangements for transfers such as Hound Point and Braefoot Bay Terminals where dedicated tugs are in constant attendance. Ships at anchorage must not be exposed to lesser standards of safety.

2. Vessel Design

All vessels involved with the proposed STS transfer operation in the Forth must be independently certified as meeting current safety standards set by IOM/MCA/FP for seaworthiness. All vessels are to be double hulled and all shipping documentation must be available for inspection by all Clearwater Forth Stakeholders.

Clarification is required regarding types of vessels to be involved. Para. 3.2 states that STS will involve ULCC but para. 3.3.1 only makes reference to VLCC. Does the risk therefore include use of ULCC vessels in the Forth?

3. Hoses

The suggested oil spillage involving the loss of 137 cubic meters of oil in three minutes is seen as the probable spill released rather than lowest probability. The City of Edinburgh would suggest that the oil spillage has to incorporate the worst case scenario which could involve spillage of vast quantities of oil into the Forth which would involve a Tier 3 response.

4. Third Party Collisions

Forth and Tay Navigation Service manage all ship movement in the Firth of Forth. Tanker collision is seen as a possibility which would have major environmental impact on both sea and terrestrial habitats. As mentioned earlier, the continual presence of tugs on station to intervene whilst ships are at anchor should any emergency arise is seen as fundamental to the safety of this operation.

5. Groundings and Anchor Dragging

Report on grounding incidents such as the Aframax suggests that grounding incidents account for the highest level of oil pollution in the past 26 years. The Assessment by Aquatera implies grounding occurs once in every 790 years. The permanent presence of a tug on station is therefore seen as an essential safety requirement to assist shipping should difficulties arise and prevent issues such as
grounding and anchor dragging from occurring especially, in light of the proximity of the proposed anchorage to the National Transmission gas pipeline.

6. Operational Spillages and Shipping Accidental Spillage

Operational spillages are more likely to be in the order of 12 cubic meters than the 1 cubic meter indicated by MMS.

MMS suggest the potential for larger spills (1000-60000 cu m) are not likely from STS operation. Spill modelling should therefore incorporate larger spills especially in region of 1000 to 60000 cubic meters which are evidently more in line with estimates suggested by sources such as IPIECA.

The City of Edinburgh’s view is that all tanker operations including STS activities increases risk of large scale spills especially those involving a worst case scenario resulting from collisions and/or groundings. The increased risk from spills involving loss of tanks or vessel integrity has the potential for serious consequences to the Firth of Forth.

7. Fire and Explosion

Edinburgh is concerned that the ability to tackle explosion and extinguishing procedures on board are not adequate. There appears to be a distinct lack of dedicated fire fighting equipment for STS operations compared with the land based systems and fire fighting tugs available at permanent facilities such as Hound Point and Braefoot bay.

Lothian and Borders Fire and Rescue Services has accepted the lead role for fire fighting at sea. This response would not therefore be immediate and would not be adequate should any fire occur on board any STS vessel.

Safety arrangements must therefore incorporate presence of a fire fighting tug being on station at all times to respond immediately to this type of emergency.

8. Potential Oil Spill Causes from STS Operations

Suspension of STS operations in adverse weather conditions should not be the sole responsibility of the STS Advisor and should fall to an independent authority such as the HM Coastguard.


The comparison of possible future levels of risk have been compared to those that applied in 1988 because it was shown to be a previous peak in oil activity in the Firth of Forth. The replacement for lost shipping is not appropriate and assessment of the level of risk has to reflect increase based on present shipping levels. As STS operations and cargo types are new to the Forth, there is a new and different level of risk to be considered.
10. Spill Probability Conclusion

Forth Ports and MMS have indicated that a stand-by vessel would be constantly on-station to initiate immediate pollution response at the STS anchorage. Clarification is needed as the MMS STS Transfer oil spill plan only specifies that a stand-by counter pollution vessel would be on site at the commencement and completion of loading and would at all other times be moored at Burntisland harbour to provide an early response.

The constant presence of a stand-by counter pollution vessel at the STS anchorage is a fundamental component of the oil spill plan as the potential for spillage is not restricted to the commencement and completion of loading / unloading operations. Furthermore, the proximity of the anchorage to the Fife coastline makes immediate intervention and the presence of the counter pollution vessel all the more necessary if counter pollution measures are to be effective.

The MCA must validate the spill probability date provided before STS operations are determined.

11. Oil Spill Modelling

Although not independently validated, the deterministic and stochastic modelling presented by Aquatera demonstrate the limited time period should a spill occur before oil will impact on areas of sensitivity in the Forth. The Firth of Forth is designated an international RAMSAR status and has listed Marine Extreme High Risk Areas (MEHRA’s) and sites of SSSI, SPA and SPA.

The modelling demonstrates that even a small spill will have a serious impact as a large proportion of the oil will reach the Fife coastline, the Isle of May and ultimately may even reach the Bass Rock. With oil spill modelling it is important not to focus on smaller spills but to consider the devastating impact and long term environmental damage a worst case scenario will have on the entire Firth of Forth.

Spillages from The Sea Empress (72,000 tonnes) and Baer (85,000 tonnes) would indicate that a disaster of this magnitude could result from STS in the Forth. The assessment fails to full address the impact of such a disaster on the Firth of Forth environment in the short term and in the longer term.

12. Mechanical Containment and Recovery and Waste Disposal

Mechanical containment close to the source of the spill is recognised as the only location where practical recovery may be deployed. Coastline protection especially for sensitive sites is also limited. Again in para 4.3.1 reference is made to the response vessel being on stand-by during the initial start-up and on topping off on completion of operations. At all other times, the vessel will be on stand-by at a close by harbour. This arrangement is not deemed acceptable for response to oil spill arrangements,
STS transfers involving highly persistent oil such as Group IV Russian Export Blend Crude raises serious concerns should spills occur in light of the limited equipment known to be available in the Firth of Forth area. Agreement is needed with all stakeholders on the recommended types, quantity and location of equipment and materials to be provided prior to any STS operation being given approval.

It is noted that the emergency response vessel is only to be equipped with a 10 tonne deck recovery tank to cope with spillage material which will limit the vessels counter pollution capability.

Para 4.4 states that Shanks and McEwan in Glasgow can dispose of oiled waste. This statement is misleading as there is no landfill site licensed in Scotland by SEPA to take hazardous waste from a large scale oil spill. Shanks and McEwan only have capacity for very small scale oily and hazardous waste. The logistics of removal of such waste is likely to be prolonged and expensive and it is therefore imperative that disposal is addressed before any STS operations commence.

MMS have indicated that permission may be possible to treat liquid oil waste at Grangemouth. Before any STS operations commence, permission must be agreed to alleviate concerns about possible rejection of oil waste at this refinery.

13. Individual Action Sheets

In light of earlier comments regarding the required presence of a stand-by counter pollution vessel on station throughout the entire STS operation, it will be necessary to revise the personnel checklists in this section of the plan.

14. Slick Tracking and Surveillance

In para 8.4 MMS have indicated that for medium to larger spills aircraft will be mobilised to undertake aerial surveillance and this will be undertaken at least twice per day. It is suggested that should STS transfers be introduced in the Forth, routine aircraft surveillance be also introduced to monitor the Firth of Forth for pollution.

15. Step 6 – Waste Disposal

Guidance notes indicate that Local Authorities are responsible for shoreline clean up and disposal of oily waste from such operations. Whilst Local Authorities do have a management role in the shoreline clean-up process, disposal should not solely rest with the Local Authority to administer and should be for MMS or the polluter to address.

16. Appendix G

Edinburgh does not contest that the Firth of Forth is an existing oil handling port but it does consider the proposed STS operation at anchorage to be a significant change in procedure and risk compared with existing port operations. The bulk of current oil operations with the Firth of Forth involve Fortes blend crude which is a
light oil compared to the proposed Group IV REBCO heavy fuel oil proposed for STS transfer.

STS activities at anchor are clearly distinct from current transfer operation such as Hound Point. Transfer of crude oil at any terminal ensures the vessels are secured with the terminal providing land-based vapour recovery systems, fire fighting arrangements, emergency shutdown, evacuation procedures and counter pollution procedures which will not be available to ships at free anchorage. The claim by MMS that the proposed STS operations are no riskier than jetty based operations is therefore not accepted.

MMS have indicated that where existing equipment is unsuitable for recovery and handling of particular materials, new equipment is to be purchased which will be able to handle these materials. Counter-pollution capability and resources available under Clearwater Forth must be revised and agreed as current assets were prepared to cope principally with spills of lighter oils such as Fortes blend crude and were not designed to cope with spills involving heavy oil products such as REBCO. The potential impact of any spillage is dependent on ability and capability to cope with different oils being transferred. Insufficient evidence has been provided which details the specialised equipment proposed for heavier oil products.

The statement that STS operation presents only ‘limited alteration’ to the oil handling operations underestimates this entire proposal. The proposed STS operation will increase shipping activity in the Forth, utilising ULCC and VLCC vessels to transfer heavier oil at free anchor in a sensitive estuary, the net result of which will increase overall risk by over 30%. This proposal is therefore viewed as a major development in the Firth of Forth which creates a whole new locus for oil spill risk and introduces oil products which will have different physical properties from those presently handled.

MMS indicate that STS has already been approved in other sensitive areas of the UK and refer to the Cromarty Firth, Sullom Voe and Scapa Flow. It should be noted that it is only in Scapa Flow where the Harbour Authority accepts STS operations similar to the proposals for the Firth of Forth. In addition, one major difference to the Forth is that the Harbour Authority for Scapa Flow is the Local Authority and not a private company, which ensures oil revenue is directly utilised for safety and effective counter-pollution measures.

17. Insurance

Under Section 138 of the Local Government Act, Local Authorities manage the response to maritime oil spills and the subsequent shoreline clean-up. No central funding is provided specifically for these activities and Local Authorities have to rely on the ‘polluter pays’ principal as a mechanism for recovery of costs.

Local Authorities who have experienced oil spill clean ups have encountered difficulties in attempting to recover all costs incurred from the International Oil Pollution Compensation (IOPC) fund. It is known that compensation claims by the
French and Spanish Governments and other parties following the Erica and Prestige oil spills could not be met from the IOPC fund.

If STS operations in the Forth were to proceed, Edinburgh would require an unconditional guarantee that all costs incurred by this Council in any clean up operations would be met within a reasonable time period. Operators will need to demonstrate adequate insurance cover to meet all liabilities including indirect cost losses such as tourism revenue.

18. Revised Environmental Impact Assessment – Aquatera

a) Ballast

The possibility for the introduction of foreign species being discharged into local waters in the Firth of Forth causing harm to indigenous species cannot be discounted as mother vessels arriving with ballast will require to discharge into the marine environment of the Forth.

MMS states that ballast would be subject to random analysis and that common practice is to change ballast en route to the Forth. Without any mandatory regular monitoring, MMS have failed to provide adequate assurances that alien species will not be introduced into the waters of the Firth of Forth.

b) Noise

The noise assessment lacks frequency analysis information to enable accurate assessment to be made. Further information will be required especially as the proposed STS operation has potential to run on a 24 hour basis.

c) Emissions to Atmosphere

Vapour release during transfer will occur, as no on-ship recovery plant can be utilised at present. During transfers, vapour from empty tanks will be displaced and released to atmosphere which will affect local air quality.

Previous complaints from the public concerning emissions from Hound Point and Braefoot Bay marine terminals required the installation of land-based vapour recovery systems to abate the public complaints which were received for a considerable distance from both terminals.

Purging of empty cargo tanks en route should ensure any residual vapours are liberated to atmosphere before vessels reach the Firth of Forth. Human sensitivity to odours involving sources such as mercaptans and hydrogen sulphide is high; therefore progress is needed to introduce reliable vapour recovery for moored operations in the Forth to prevent the potential for odours being detected on shore and giving rise to complaints.
c) Economic Benefits to Firth of Forth

The economic benefits in the Firth of Forth identified by Aquatera from STS operations are based on a total of 15.4 FTE jobs of which 13.4 would be based locally. It is suggested that this operation will add around 8 million tonnes to the Forth Ports operation, which would equate to a net economic benefit of some £4 million to the economy in the Firth of Forth annually. The ultimate beneficiaries remain to be identified but when spread across the entire Forth region, the result would therefore be of minimal benefit to the populations of individual local authority in the Forth area.

Local Authorities are being asked to increase their preparedness and resource commitment without receiving any direct support from this proposal. The economic benefits have to be set against the increased risks to Local Authorities and wildlife populations in the Forth.

d) Firth of Forth

The Firth of Forth has RAMSAR status and is also designated as a Special Protection Area. The Isle of May and Bass Rock are listed as Marine Extreme High Risk Areas (MEHRAs) and the coastline and inshore waters of the Forth include areas of environmental sensitivity and designated coastal nature conservation sites.

Any oil spillage in this very sensitive environment, irrespective of size, has the potential to cause harm and have serious consequences for wild life populations in the short term and have longer term effects to the environment.

Conclusions

1. It remains a concern that The Merchant Shipping (Ship to Ship Transfers) Regulations 1999 still remain in draft format. A review of these regulations and implementation is needed to provide the rigour and safety needed before any decision can be taken on the Firth of Forth proposal.

2. The MMS OSPC fails to provide the appropriate oil response for an operation of this nature. The location of the counter pollution vessel on station during commencement and completion of loading is not acceptable. Counter pollution equipment and materials in the Forth area requires to be specified and agreed to provide an effective response capability for heavier oils such as Group IV REBCO.

3. The potential for problems to occur with STS transfer at anchor makes the presence of a support tug with fire fighting capabilities an essential safety feature for this proposal.

4. The economic benefit to the City of Edinburgh and neighbouring authorities from this proposed operation is viewed as negligible. As a direct result of any consent given, local authorities around the Forth will be require to increase
their preparedness and be ready to deploy resources to cope with spillages which could arise from this new oil transfer operation. Small spillages could result in Local Authorities having to face initial clean-up cost amounting to several million pounds before cost recovery commences.

5. The assessment and impact of the worst case scenario on the Firth of Forth is needed especially in the case of Group IV Russian Export Blend Crude Oil before any decision is taken.

6. Information on provision of new specialised equipment referred to by MMS is needed before the question counter pollution capability can be fully assessed.

7. Reference by MMS that Shanks and McEwan can receive oily waste is misleading as the site in Glasgow is licensed to only accept small quantities of oily waste and hazardous material. Waste disposal in Scotland remains a serious issue for all coastline Authorities. Agreement is also needed on the question of oil refineries accepting liquid oily waste following spillage.
Dr. J. Johnston,
Clerk to the Public Petitions Committee,
The Scottish Parliament,
Parliamentary Headquarters,
EDINBURGH EH99 1SP

Our Ref:
Your Ref:

Date: 29 June 2006

Dear Dr Johnston

CONSIDERATION OF PETITION PE 956-
PROPOSED SHIP TO SHIP OIL TRANSFERS FIRTH OF FORTH

Dear Dr. Johnston,

Thank you for your letter dated 15 may 2006 inviting East Lothian Council’s views on petition PE 956 to the Scottish Parliament by.

It is a matter of public record that East Lothian Council are against ship to ship oil transferences in the Firth of Forth and supportive of the Conservation (Natural Habitat, &c) Regulations 1994, being applied in relation to ship to ship oil transferences in the Firth of Forth.

The council has lobby representatives at all levels including MPs and MSPs to invite support for the council’s position. In addition East Lothian Council has banded with other local authorities surrounding the Firth of Forth including Fife and City of Edinburgh Councils who have voiced similar objections to this proposal.

Contingency Plans For Dealing With The Risk

East Lothian Council has considered the Environmental Impact Assessment, and oil spill plan and does not believe the measures detailed therein would deal adequately at containing and controlling an oil spill that could be upwards of 50 –100,000 tones of persistent Group IV substances like Russian Export Blend Crude oil. This type of oil spill will have a profound detrimental impact on the environment, damaging for many years the fragile costal habitats as well as devastating the tourism industry of the area.
The proximity of the ship-to-ship operations to the shoreline would mean any oil spill would land on the shore very quickly. Realistically the oil will be on the beaches before an adequate response could be resources and implemented.

Scotland does not have a strategy for the bulk disposal of hazardous oily waste material. If a ship-to-ship spill occurred the volume of spilt persistent heavy crude oils could significantly increase in volume. Without a national facility extra pressures and expenditure of resources are place on the local authorities.

Benefits Associated With Ship to Ship

East Lothian Council will receive no benefit or reward from ship to ship operations in the Firth of Forth. No new jobs will be created in East Lothian as a result of ship to ship.

However, a small oil spill would significantly divert local resources to the oil spill to the detriment of the East Lothian population.

A minor spill will potentially cost millions of pounds in clean up cost, legal fees, and disposal of hazardous waste, the local economy, primarily tourism will loose potentially millions of pounds in lost revenue, before any compensations are payable.

The populace of East Lothian and Fife have repeatedly spoken out against ship-to-ship operations. There is a body of local authorities and public sector organisations that have spoken against ship-to-ship operations. If permissions are given to commence operations it is hard not to perceive the decision is commercially based, it is not in the interests of the populace, the councils or public bodies.

Maritime and Coastguard Agency Consultation

East Lothian Council as a stakeholder in Clearwater Forth was consulted by, and responded to, the Maritime and Coastguard Agency (MCA), on the proposed transfer Ship-to-Ship of crude oil and other hydrocarbons by Melbourne Marine Services in the Firth of Forth.

The MCA’s Consultation was limited to the technical aspects of oil spill contingency plan, and it appeared that environmental issues were not in the scope of the consultation. It would also appear that the wishes of the populace of the Firth of Forth were irrelevant to the approval of ship-to-ship operations.

Conclusion

East Lothian Council strongly recommends that any consideration of ship to ship in the Firth of Forth is subject to the Conservation (Natural Habitat, &c) Regulations 1994.

I trust the foregoing adequately explains the council’s position on this issue but please do not hesitate to contact me should you have any queries.

Yours Sincerely,

Stephen McLachlan
For John Lindsay
Chief Executive East Lothian Council
Our Ref: EP/2500
Your Ref:

Dr James Johnston
Clerk to the Public Petitions Committee
TG.01
Parliamentary Headquarters
Edinburgh
EH99 1SP

1 June 2006

Dear Dr Johnston

Consideration of Petition PE956

I refer to your letter of 15 May 2006 asking for views regarding the above petition.

West Lothian Council participates in the Forth Oil and Chemical Group, which consists of emergency planning officers from councils with shorelines on the Firth of Forth. The group forms a focal point for raising awareness of the contingency plans for responding to an oil pollution incident in the Firth of Forth that exist at national, estuary and local level. This is achieved by promoting participation in training courses and exercises associated with these plans, including the annual exercising of the Forth Ports plc Clearwater Forth contingency plan. It has been noted that the existence of ship to ship transfer carries an increased risk of oil spillage.

The emergency response arrangements place considerable emphasis on the importance of responding to environmental issues arising from an oil spill. This would be done by setting up an environmental group with the Shoreline Response Centre and would include representatives from agencies such as SNH and the RSPB. While this would not prevent damage to the environment including wildlife, it should go a considerable way to mitigating the risks and aiding recovery.

So far as potential benefits from ship to ship transfer are concerned, it is difficult to identify any benefit of significance other than a possible commercial benefit to Forth Ports Authority plc. There might be some minor local benefits to areas immediately adjacent to the transfer points e.g. hotels, taxis.
The Maritime Coastguard Agency is currently considering a request from Forth Ports plc to amend its contingency plans to include ship to ship transfer. It is recognised that ship-to-ship transfer is a lawful activity, which takes place elsewhere around the UK coastline. West Lothian recognises that the impact of any failure in the proposed ship to ship transfer operations would be unlikely to have a direct impact on its area given its location and short shoreline. However, a serious failure in STS could result in serious damage to the shoreline environment in the Firth of Forth with consequent impact on the tourism industry a major contributor to the economy in this area, and to the international and national importance of its biodiversity.

Given previous experience of media coverage of similar events, the indirect affect on West Lothian could be significant. We would wish to ensure therefore that if ship to ship transfer were to proceed, the potential impact on the environment is taken into full account.

Yours sincerely

Alex Lithgow
Chief Executive
The Scottish Parliament Public Petitions Committee: Consideration of Petition PE956

August 2006

The Scottish Parliament Public Petitions Committee wrote to the Marine Conservation Society on 15 May 2006 seeking our views on Petition 956. These are outlined below.

Contingency plans for dealing with oil spills
MCS recognize that oil spill contingency plans (OSCPs) are a legal, and welcome, requirement for procedures involving handling and transfer of oil in ports, harbours and other facilities. The 14 July 2006 response by the Maritime and Coastguard Agency to the draft Forth Ports plc OSCP clearly illustrates the many shortcomings in that draft and inadequate reference to sea mammals, habitats and seabirds. However, this is not our principle concern. As we made clear in our response to the original MCA consultation the fact that legislation exists to ensure OSCP are put in place is, so far as the proposal by Melbourne Marine Services for ship-to-ship oil transfers in the Firth of Forth, in our view ‘shutting the stable door after the horse has bolted’. It is the view of MCS that a consultation should be carried out that considers whether ship-to-ship oil transfer is an activity that should even take place in the Firth of Forth at all, where there are numerous marine wildlife sites and Marine Environment High Risk Areas.

Benefits associated with ship to ship transfers
MCS can see very little public benefit accruing from the proposed ship-to-ship transfers in the Firth of Forth. Quite the contrary, there is a risk of great public disbenefit. An oil spill in the wrong place at the wrong time with the wrong tidal or weather conditions could have a devastating impact on coastal and subtidal habitats, sea mammals (including seals and cetaceans), seabirds and the local tourist and inshore fishing industries of the Firth of Forth and potentially further north and south of the Forth in the outer Firth of Tay and Berwickshire coast respectively. The potential gain of a few jobs is greatly outweighed by the potential risk to the coastal and marine environment, tourism and fishing industry in the Forth. It is the view of MCS that the only parties that stand to benefit from this operation are those that have a financial interest in the project.

Compatibility of ship-to-ship transfers with duty to protect the environment and natural habitats
Under the European ‘Habitats’ Directive, Article 6(3) (transposed into UK law by the ‘Habitats’ Regulations Regulation 48), examination of the implications of a “plan or project” for European wildlife sites is required and, if likely to have an adverse impact on a Natura 2000 site, under Article 6(4)/Regulation 49 the “plan or project”, in this case ship-to-ship oil transfers, can only go ahead if there are no alternatives and there are “imperative reasons of over-riding public interest”. An Appropriate Assessment would need to be carried out to determine whether such a plan or project should go ahead. As outlined above, MCS does not believe that the ship-to-ship operation could ever be considered “of over-riding public interest”.

Whilst ship-to-ship transfer is itself a lawful activity, MCS note that no statutory mechanism exists to reject such proposals if they are likely to affect European Marine Sites, in this case the Firth of Forth and Forth Islands SPAs and Isle of May SAC. We also note that the Secretary of State for Transport is empowered by S130 of the Merchant Shipping Act 1995 to introduce regulations to

1 http://www.mcsuk.org/downloads/scotland/MCSresponse_ForthS2S.pdf
cover such transfers and that the Act specifically enables regulations to prohibit transfers, or make them subject to conditions.

MCS believe that consultation on the Oil Spill Contingency Plans does not meet the requirements of the Habitats Directive since it consults not on whether ship-to-ship oil transfers should go ahead but instead on how to deal with such an operation going awry.

Appropriate regulations therefore need to be brought in by the UK Government under the Merchant Shipping Act 1995 that would enable the possibility of proposals to be rejected outright, thus closing the current loophole of default acceptance of ship-to-ship transfers.

Environmental Concerns

The aforementioned lack of regulations governing ship-to-ship oil transfers means that the implications of the proposed operation on the marine species and habitats of the Forth are not assessed and there is no means to attach conditions to the transfer operations. MCS is concerned that, although the Firth of Forth currently sees high levels of oil tanker traffic, the proposal by Melbourne Marine Services would affect a part of the Forth currently free from oil-related activity.

We would like to draw attention to the potential impact on the qualifying features for the Isle of May SAC, namely grey seals and rocky reefs, features which are of course also present throughout the Firth of Forth beyond the SAC boundary.

Grey Seals

The grey seal (Halichoerus grypus) breeding colony on the Isle of May is the largest on Scotland’s east coast and the fourth-largest in the UK, contributing 4.5%² of annual UK pup production. Considering that the UK hosts about 40%³ of the world population (and 90% of the EU population) the Isle of May alone is potentially home to almost 1 in 50 of the world’s grey seals.

MCS is concerned that even a small-scale spill of REBCO, a dense, persistent oil, in the wrong place, at the wrong time and in the wrong weather or tidal conditions could have a devastating effect on the marine environment of the Forth. For example, grey seals give birth to their pups in late autumn and these pups are ashore on the Isle of May from October to December. Even a small spill off Methil during these months, carried eastward on an ebbing tide in relatively calm conditions could wash ashore at the pupping beaches of the Isle of May and cause damage to a year-class of pups.

Even if Isle of May seals were able to escape a spill, they could be displaced to other more developed areas of coast where they would not enjoy the same degree of isolation and relative protection.

Rocky reefs

Rocky reefs are a secondary habitat feature for which the Isle of May SAC is designated. Often overlooked, the rich communities of seaweeds, soft-coral, demersal fish, starfish, crabs, sponges and molluscs such as octopus, will also be adversely effected by an oil spill.

MCS would have concerns about the impact of an oil spill on the condition of animal dominated reefs of the Isle of May SAC and, although not designated SACS, the reefs associated with the other Forth Islands and rocky shores. MCS would also have concerns that, if the tidal conditions were correct, a medium to large oil spill may even impact the rich rocky reefs and sea caves of the northern end of the Berwickshire and North Northumberland SAC in the vicinity of the St Abbs and Eyemouth Voluntary Marine Nature Reserve.

An oil spill in the wrong place at the wrong time with the wrong tidal or weather conditions could also have a devastating impact on the local tourist and inshore fishing industries of the Firth of

² http://www.jncc.gov.uk/protectedsites/sacselection/sac.asp?EUCode=UK00310172
³ http://www.jncc.gov.uk/ProtectedSites/SACSelection/species.asp?FeatureInCode=S1364
Forth and potentially further north and south of the Forth in the outer Firth of Tay and Berwickshire coast respectively.

Competency
MCS also understand that under regulation 44 of the Habitats Regulations, provision exists to licence activities that could disturb a European Protected Species, or damage or destroy breeding sites or resting places. Since nature conservation is a devolved matter, it is the responsibility of the Scottish Executive to determine whether a licence would be required for ship-to-ship transfers in the Firth of Forth.

Conclusion
MCS recommend that the proposal by Melbourne Marine Services for ship-to-ship oil transfer off Methil in Fife should be refused. Consideration of such a proposal should only take place after such time as regulations governing ship-to-ship oil transfers have been enabled by the Secretary of State for Transport under the Merchant Shipping Act 1995. Such regulations would enable an Appropriate Assessment of the proposals to be carried out in line with the European Habitats Directive and provide for the opportunity to reject ship-to-ship proposals outright.

It is within the power of the Scottish Executive to licence ship-to-ship transfers in the Firth of Forth. Therefore, MCS urge the Scottish Executive to refuse to grant a licence for an activity that MCS consider of unacceptable risk to the Forth's marine natural heritage, coastal communities and local tourist and fisheries industries.

For further information please contact:

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Marine Conservation Society
The Marine Conservation Society (MCS) is the UK charity dedicated to protecting our seas, shores and wildlife. Among a range of marine conservation aims, MCS would like to see proper protection for marine species and habitats and the elimination of pollution of the marine and coastal environment, from both land-based and offshore sources.
Contingency plans for dealing with oil spills

Oil spill contingency plans are legally required for oil handling facilities and harbours in the UK. The process for agreeing their content is separate from that of consenting oil facilities and is the responsibility of the Maritime & Coastguard Agency (MCA). In our response to the MCA consultation\(^1\) on oil spill contingency plan changes for the Firth of Forth, we distinguished between the process of agreeing these and that of consenting ship-to-ship (STS) transfers themselves\(^2\). We are principally concerned about risks associated with the STS project – contingency plans, if properly drafted and implemented should reduce the impacts of an oil spill should one occur.

MCA reported on its consultation on July 14\(^{th}\) and listed a number of changes required to be made to the draft oil spill plans\(^3\). These included additional risk modelling of “worst case” spill. We do not know if these results and associated risk assessment will be made available for comment. MCA did not consider impacts of the STS project itself – only of changes to oil spill plans. However, MCA have made the consultation responses public in full, and have “encouraged Forth Ports plc to take account of those comments which are relevant to their functions.”\(^4\)

Benefits of ship-to-ship transfers

The benefits of ship-to-ship transfers appear to us to be primarily financial. The main driver for STS at locations in the North Sea seems to be (economy of scale) savings to be made by oil and shipping companies from transporting Baltic oil on to the Far East in large as opposed to small tankers. The service providers (specialist shipping companies and port operators) can also be expected to derive financial benefit. Projected benefits of the Firth of Forth proposal in terms of job creation are small compared with the number of existing jobs in tourism, including wildlife tourism.

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\(^1\) Announced by SoS for Transport on 22 November 2005; open from 16 February to 11 May 2006.

\(^2\) [http://www.rspb.org.uk/Imageresponse%20FINAL_tcm5-101502.pdf](http://www.rspb.org.uk/Imageresponse%20FINAL_tcm5-101502.pdf)


\(^4\) Letter from MCA to RSPB Scotland, 1\(^{st}\) August 2006.
STS is additionally an attractive commercial proposition because it requires no (or minimal) infrastructure, merely the identification of an anchorage. This is both cheap and unencumbered with the legal requirement for Environmental Impact Assessment, in spite of the Firth of Forth project having been stated as potentially handling 8 million tonnes of oil or oil products annually.

Potential benefits should be contrasted with risks to communities and the environment around the Firth of Forth in the event of an oil spill. The risk assessment consulted on by MCA estimated that STS would increase the chance of oil spill in the whole Firth by one-third. However, an informed critique of this document suggests that the proposed STS operation could double the risk of spillage. The harbour authority has commissioned a new risk assessment, but this has not been made public, apparently because Forth Ports plc do not regard themselves as a Scottish public authority.

Compatibility of ship-to-ship transfers with duty to protect the environment and natural habitats

Environment and rural affairs

The Firth of Forth and the Firth of Forth Islands are classified as Special Protection Areas (SPAs) under the EU Birds Directive. The Conservation (Natural habitats & c.) Regulations 1994 (as amended) offer a high level of protection to “European Wildlife Sites” (EWS). However, the procedures to be followed in determining consent for “plans or projects” which might affect EWS vary according to the type of consent.

Amending regulations proposed by the Scottish Executive in response to a recent European Court of Justice decision improve procedures for assessing water abstraction projects and development plans. However, a number of consenting regimes continue to rely on a general duty (under regulation 3 of the 1994 regulations) “to have regard to the requirements of the Habitats Directive”, which the Court felt was inadequate for development plans and water abstraction. Consents covered only by regulation 3 include those made under harbour authority byelaws and orders under the Harbours Act 1964.

The procedures set out by Part IV of the 1994 regulations (which apply to many consents, including town and country planning, electricity, and roads) meet the requirements of the Habitats Directive regarding plans and projects. This includes “appropriate assessment” which must demonstrate “no reasonable scientific doubt as to the absence of adverse

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8 Under regulations transposing the Environmental Impact Assessment Directive.
9 Page 3-3 of [link]
10 Page 32 of [link]
11 Response number 19 in [link]
12 In the sense of the Environmental Information (Scotland) Regulations 2004.
14 Special Protection Areas; and Special Areas of Conservation (SACs) classified under the EU Habitats Directive.
15 [link]
impact” on European Wildlife Sites. If the assessment is “negative”, plans or projects can only be consented on the twin grounds of no alternative solutions and “imperative reasons of over-riding public interest”.

There is an argument that these procedures should be followed as a matter of policy by competent authorities exercising their general duty under regulation 3, even if not required as a matter of law. However, the powers of Scottish Ministers under part IV to prevent consent by a competent authority on the grounds of imperative reasons of over-riding public interest does not apply under the regulation 3 general duty, because it is not a requirement of the Habitats Directive, but only of the UK regulations. Therefore, should Forth Ports wish to consent STS on the grounds of imperative reasons of over-riding public interest, Scottish Ministers are unable to prohibit the project – unlike most consents on land and in spite of being legally responsible for implementing the Habitats Directive in Scotland.

This anomoly could be rectified in the medium term by consolidating the Habitats Regulations with additional amendments and by the introduction of marine legislation for Scotland, including measures for marine spatial planning.

Local government and transport

Ports policy in Scotland – with some exceptions – is devolved. Matters reserved to Westminster even within harbour areas include shipping, pollution and marine safety, which explains the involvement of both the MCA and the Department for Transport in the Firth of Forth proposal.

S48A of the Harbours Act 1964 imposes environmental duties on harbour authorities throughout the UK. This section was inserted by the Transport and Works Act 1992 and predates the Habitats Directive. If the S48A duty requires updating to reflect the requirements of the Habitats Directive, this may be possible in Scotland through the proposed Transport and Works (Scotland) Bill.

More fundamentally, there is a question of how company ports established under the Ports Act 1991, which are public limited companies retaining the statutory functions of former ports authorities, can be seen transparently to exercise their regulatory functions in the public interest, independently of duties to shareholders. The Department for Transport’s Ports Policy Review (for England, Wales and Northern Ireland) specifically asks whether the arrangements for the supervision of harbour authorities’ powers are adequate14. The Scottish Executive’s parallel consultation15 does not – though the question legitimately arises from the Firth of Forth STS proposal.

Were statutory harbour authorities in Scotland more clearly accountable to Scottish Ministers, there might be greater public certainty about the appropriateness of harbour byelaws for consenting a commercial programme of STS transfers and of harbour

15 http://www.scotland.gov.uk/Publications/2006/07/ports-policy
authorities' status as Scottish public authorities under the Environmental Information (Scotland) Regulations 2004.

Westminster

STS transfers may be regulated by the Secretary of State for Transport, empowered by S130 of the Marine Shipping Act 1995. These powers are reserved, even within harbour areas in Scotland. STS regulations were drafted in 1999, but have not come into force. The Department for Transport intends to consult on STS regulations and bring them into force by the end of this year\(^\text{16}\). However, it appears that these regulations will simply confine STS in UK territorial waters to harbour areas, without further regulating the process within them\(^\text{17}\). This could be a missed opportunity missed to (i) make the consenting regime for STS consistently compliant with requirements of Habitats Directive and (ii) to introduce powers for consents to be determined in some circumstances by ministers (for example, if requested to do so by the harbour authority, or if there is a credible suggestion of a conflict of interest).

Conclusion

Forth Ports plc appear to be the competent authority to consent STS transfers in the Firth of Forth and also to be responsible for implementing the requirements of the Conservation (Natural habitats &c.) Regulations 1994. However, this responsibility hinges on a general duty found by the European Court of Justice to have been lacking with regard to other consent regimes. Forth Ports' operation of their statutory functions with regard to STS could be said to have lacked transparency. Therefore, there is considerable public doubt as to Forth Ports' willingness and ability to meet the requirements of the Regulations in a way which also meets the requirements of the Habitats Directive. Should the requirements of the Directive not be met, it seems that Scottish Ministers, rather than Forth Ports, would be accountable.

For further information please contact:

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Registered Charity Number: 207076 – AUGUST 2006

RSPB Scotland is part of the RSPB, the UK-wide charity working to secure a healthy environment for birds and wildlife, helping to create a better world for us all.

\(^{16}\) House of Commons Official Report 30 March 2006: column 1119W.  
\(^{17}\) Ministerial correspondence Alistair Darling to Rhona Brankin 27 April 2006; correspondence Stephen Ladyman (Minister of State for Transport) to various constituency MPs 25 May 2006; House of Commons Official Report 24 July 2006 column 753W.
Ship-to-ship oil transfers in the Firth of Forth

- The Maritime & Coastguard Agency’s (MCA) recent approval of oil spill plans covering ship-to-ship (STS) transfers of oil in the Firth of Forth is conditional on full assessment of the project itself by Forth Ports – who now bear responsibility for UK authorities’ compliance with the EU Habitats Directive.
- The required assessment must be done in accordance with tests set out in European law but the data to meet these tests do not exist. Forth Ports are in consultation with SNH in carrying out the assessment. They wish comments from SNH quickly - but a rapid decision to consent could be in breach of EU law.
- It is not clear where responsibilities lie between UK Government, Scottish Ministers and harbour authorities in the event of a complaint being made to the European Commission – since ministers lack powers to “call in” consents in harbour areas.
- New UK regulations are likely to confine commercial ship-to-ship transfers to harbour authority areas, without regulating the process further within them – this would miss the opportunity to clarify harbour authorities’ general duties under UK regulations with regard to European Wildlife Sites and ship-to-ship transfers.

Background
Melbourne Marine Shipping applied in 2005 to Forth Ports plc for permission to carry out an unspecified programme of commercial ship-to-ship oil transfers (STS) in the Firth of Forth. This would increase the risk of oil spill for the whole Firth and all its wildlife by creating a new focus for oil activity, affecting areas currently at low risk, including important concentrations of birds.

MCA consulted the public from February to May 2006 on oil spill plan changes to cover STS. They reported on July 14 on amendments they required to be made to the plans and on the implications of the plans for European Wildlife Sites. Changes were made and MCA gave final approval to the plans on 25 August.

The decision to consent rests with Forth Ports plc’s board and is unlikely to require confirmation by Scottish Ministers or UK Government. Forth Ports may consult on a restricted basis a revised Environmental Impact Assessment (EIA) and a new oil spill risk assessment, but it is not clear with whom or at what stage in the process.

STS is not covered by the EIA or Strategic Environmental Assessment Directives – no-one has taken a strategic approach to determine the national need for STS or how this might best be met.

Solutions
- Scottish and UK Ministers must now do everything possible to ensure that Forth Ports secure compliance with the Habitats Directive in considering STS proposals – and (in view of the high level of public interest) that they do so transparently and in consultation with the public.
- In the longer term, ensure that harbour authorities are more clearly accountable to the public for their environmental responsibilities and in carrying out their statutory functions. This could be addressed in part by: marine spatial planning elements of marine bills for the UK and Scotland; clearer transposition of the Habitats Directive to consents in harbour areas; allowing ministers similar powers to “call in” harbours decisions as those that exist for consents by local authorities or SEPA; review of the relevant schedules of Freedom of Information Acts.

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1 Letter from SoS for Transport to Deputy Minister for Environment & Rural Development April 2006; and letter from Minister of State for Transport to constituency MPs, May 2006.
2 In their capacity as harbour authority for the Firth of Forth.
For further information please contact:

Richard Evans, Sites Policy Officer / Juliet Swann, Advocacy Co-ordinator
RSPB Scotland, 25 Ravelston Terrace, Edinburgh EH4 3TP Tel: 0131 311 6500 Fax: 0131 311 6569
Email: Richard.Evans@rspb.org.uk / Juliet.Swann@rspb.org.uk
Registered Charity Number: 207076 – 26th September 2006

RSPB Scotland is part of the RSPB, the UK-wide charity working to secure a healthy environment for birds and wildlife, helping to create a better world for us all.

For information, the regulatory framework around ship-to-ship oil transfers includes the following:

The Conservation (Natural habitats &c.) Regulations 1994: Competent authorities are bound by regulation 3(4) general duty to “have regard to requirements of the Habitats Directive” and 3(3) to “secure compliance with the Habitats Directive” in relation to marine areas.


Forth Ports Byelaws: made under powers given by the Forth Ports Authority Orders (and their Confirmation Acts) 1969 & 1980. Individual transfers (eg in emergency) require the consent of the harbourmaster (byelaw 38, 39). The harbourmaster may issue Directions to mariners (eg to identify anchorages and specify ship movements in relation to these). Changes to byelaws require the confirmation of Scottish Ministers.

Environmental Impact Assessment/Strategic Environmental Assessment EU Directives: do not cover STS – so, neither do UK/Scotland regulations

Harbours Act 1964: Leaves it up to the harbour authority to determine whether they require a Harbour Revision Order (from Scottish Ministers)

Merchant Shipping Act 1995: SI30 permits Secretary of State for Transport to regulate STS.


Scotland Act 1998: “Ports” devolved, “shipping” reserved. Oil pollution and safety within ports is “shipping”.

The Public Petition Committee
The Scottish Parliament
EH99 1SP Edinburgh
UK

For the attention of james.johnston@scottish.parliament.uk

Consideration of Petition PE956

Dear Mr Johnston,

Thank you for the opportunity to give the views of the North Sea Commission¹ on the above petition and on the issue of ship-to-ship transfer of oil, STS.

Ship-to-ship transfer of oil, STS, is an issue of great concern to our member regions, as illustrated by the Resolution, which was adopted by the NSC General Assembly in 2005 (attached). This Resolution was subsequently endorsed by the General Assembly of the CPMR (Conference of Peripheral Maritime Regions) with the addition that it should also apply to bunkers transfers. It has then been conveyed to the relevant EU institutions.

The reasons for our concern are numerous. Pollution from oil spills is a very serious threat to coastal Regions in several ways:

- Local and Regional Authorities are the first to suffer the consequences and the first to be called on to deal with the pollution. They usually are forced to bear the costs for cleaning up after oil accidents (and other forms of sea-borne pollution affecting the coasts). Their chances of getting compensation from those causing the pollution – or from any other sources – are quite limited.
- Also, the effects of oil spills on the coastal economy – often relying on fishing and tourism, both of which depend on a clean environment – can be devastating.
- Further more, the damage from oil spills on the ecological systems of the coastal areas can last a long time and even be irreparable.

All these potential effects are strong factors, which affect the sustainable development of the North Sea coastal Regions negatively.

Being an international organisation, the NSC has not – for natural reasons – previously been consulted regarding STS procedures in UK waters. However, the NSC has voiced a general opinion on the need for a common strategy covering the North Sea area, when it comes to STS. This need is evident to us from the great concern about this issue expressed by many of our members.

¹ The North Sea Commission, NSC, is the organisation of the Regional Authorities around the North Sea, with to date some 70 member Regions. The NSC was founded in 1989 to facilitate and enhance partnerships between Regions, which manage the challenges and opportunities presented by the North Sea. Furthermore, to promote the North Sea basin as a major economic entity within Europe, by encouraging joint development initiatives and political lobbying at European Union level. The NSC works through co-operation programmes, research activities, funding applications and joint policy statements, which bring positive benefits to the people of the North Sea Basin. The NSC is one of seven Commissions under the umbrella of CPMR (the Conference of Peripheral Maritime Regions).
When it comes to the details regarding STS in the Firth of Forth, we would like to refer to – and strongly support – the response provided to you by our member Region Fife Council. Fife Council has made a thorough investigation of environmental and economic as well as safety and legal aspects of STS in the Firth of Forth.

The North Sea Ministerial Meeting on Environmental Impacts of Shipping and Fisheries, "MM06", was held in May 2006. There the Environment Ministers (in the case of the UK the Minister of State for Transport) agreed that "North Sea States will work together in the IMO to develop an international mechanism to regulate ship-to-ship transfers of oil carried as cargo, and bunkering operations, beyond the limits of States' Territorial Seas."

The NSC sees the need for strong public regulation of STS procedures, particularly in view of an expected increase in this activity all around the North Sea. In anticipation of the international mechanism, apparently to be promoted by the North Sea states, the NSC urges all authorities issuing permits for STS-related activities to act with the utmost prudence and be very restrictive, whenever the sustainable development of the coastal Regions is at stake. The minimum level should include an independent Environmental Impact Assessment and an adequate contingency plan covering a true “worst case” scenario.

The concerns of the North Sea Regions regarding STS are not related solely to oil spills or accidents. The health aspects of emissions near land, as well as the increasing risks of introduction and transfer of non-indigenous species via ships’ ballast water and sediments, were highlighted at the MM06.

We would therefore like to support the petition PE956 to the Scottish Parliament, to ensure that all the relevant UK and Scottish legislation is applied, when considering the issue of STS in Scotland.

Yours sincerely,

Gunn-Mark Hegseth
President of the North Sea Commission

Annex:
Political Statement on Inshore Ship to Ship transfers of crude oil products and other hydrocarbons. Adopted at the North Sea Commission Annual Business Meeting, June 17th 2005
Political Statement on Inshore Ship to Ship transfers of crude oil products and other hydrocarbons.

Adopted at the North Sea Commission Annual Business Meeting June 17th 2005

The local authorities surrounding the North Sea represented by the North Sea Commission call upon the member Governments and the European Commission to address urgently the question of inshore Ship to Ship transfers of crude oil products and other hydrocarbons. In view of the potential environmental and economic consequences of spillage, there is a need for a common strategy covering the North Sea area. This strategy must take into account the likely increasing demand for such transfers as tanker-borne crude and refined oil exports from the Baltic and Barents Sea areas increases. Such a strategy should also address the availability of alternative less hazardous methods of dealing with any transfer.
Mr J Johnston  
Public Petitions Committee  
TG.01  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP  

Email: james.johnston@scottish.parliament.uk  

31 October 2006  

Your reference  
Our reference  

Dear Mr Johnston  

**Consideration of Petitions PE956**  

Thank you for your letter of 15 May. Lloyd's has no particular comment to make on the petition or the three issues identified.  

Yours sincerely  

Alastair Evans  
Head, Government Affairs  
Worldwide Markets  

Telephone +44 (0)20 7327 6682  
Fax +44 (0)20 7327 5255  
Email alastair.m.evans@lloyds.com
CONSIDERATION OF PETITION PE956

I write in response to Dr James Johnston’s letter to Betty Morgan on 15 May requesting that comments on the issues raised in petition PE956 by Mary Douglas calling on the Scottish Parliament to urge the Scottish Executive to ensure the Conservation (Natural Habitats, &c.) Regulations 1994, as amended, are applied in relation to ship to ship oil transfers in Scotland. The Committee in particular sought views on the following and the remainder of the letter covers each in turn:

- Contingency plans for dealing with oil spillages;
- Benefits associated with ship to ship oil transfers; and
- Compatibility of ship to ship oil transfers with duty to protect the environment and natural habitats.

In view of the other organisations that the Committee has invited to comment and the transcript of the 3 May meeting we have interpreted the proposed operations in the Firth of Forth as the prime focus of the petition and our response covers these proposals.

Contingency plans for dealing with oil spillages

All matters relating to Merchant Shipping in UK waters fall under the Merchant Shipping Act 1995 (as amended). This is a reserved piece of legislation under Schedule 5 of the Scotland Act 1998.

Section 293 of the Merchant Shipping Act 1995, as amended by the Merchant Shipping and Maritime Security Act 1997 and the Marine Safety Act 2003, gives the Secretary of State (for Transport) the function of taking, or co-ordinating, measures to reduce and minimise the effects of marine pollution. It also provides the legal basis for the National Contingency Plan for Marine Pollution from Shipping and Offshore Installations.

There is a legal requirement under The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Regulations 1998, SI 1998 No. 1056, for all harbours and oil handling facilities in the UK over specified minimum sizes to prepare and maintain ‘Oil pollution emergency plans’ (Oil Spill Contingency Plans) which must be submitted to the MCA (Maritime and Coastguard Agency) for approval. The regulations also state at Regulation 4 (3)(b) that ‘In preparing an oil pollution
emergency plan a harbour authority or operator shall take into account any guidance issued by the MCA.'

The Guidelines subsequently issued by the MCA on the preparation of Oil Spill Contingency Plans (March 2002) states that the statutory authorities that must be consulted and involved in plan development are a) the appropriate Government Fisheries Department, b) the environmental regulator, and c) the statutory nature conservation body. In addition MCA’s guidance indicates that local authorities in whose area the facility is situated, or may have an impact on, should be consulted.

In cases where the MCA does not think that a harbour plan is compatible with the National Contingency Plan (NCP), or not appropriate for dealing with oil pollution incidents which may occur within their area, then they can direct that the plans shall be altered accordingly.

Benefits associated with ship to ship oil transfers

It has been assumed that ‘benefits’ means ‘economic benefits’.

In the case of the current proposals for the Firth of Forth, which do not appear to include much in the way of oil produced from offshore operations within the United Kingdom Continental Shelf, it is difficult to determine what financial benefits will accrue to the UK or more specifically the area of the Firth of Forth, except through income to Forth Ports plc and any jobs that are created. The Environmental Statement, ‘Environmental Impact Assessment and other linked activities for ship to ship oil cargo transfers in the Firth of Forth’, produced for Melbourne Marine Services Ltd by Aquatera Ltd includes a section (6.7) on ‘Employment and economic benefits’. The Scottish Executive is not in a position to comment on the correctness of the figures etc quoted in this section.

Compatibility of ship to ship oil transfers with duty to protect the environment and natural habitats

The Scottish Executive’s obligations under the Habitats Directive mean that we are required to consider each case on it’s own individual merits. The MCA’s recent consultation exercise on the Firth of Forth Ship to Ship proposals and the Scottish Executive’s response to that consultation make clear the importance that the Scottish Executive attaches to natural heritage considerations.

Scottish Ministers have taken a very close interest in the environmental implications of the proposal to undertake ship to ship transfers of crude oil in the Firth of Forth and the associated revisions being sought to the OSCP for this proposal. That close interest relates to decisions taken previously by Scottish Ministers to designate areas within the Firth of Forth as part of the UK’s contribution to the European Network of Natura 2000 sites. These sites are the Firth of Forth Special Protection Area (SPA), the Forth Islands SPA, the Imperial Dock Lock SPA and the Isle of May Special Area of Conservation (SAC). All of these sites are of international significance and their status reflects the important habitats and species found there. For example, the Firth of Forth is of major importance for a rich assemblage of breeding and migratory seabirds as well as other wild bird species during the winter such as wintering sea-ducks and divers. This rich assemblage of water birds reflects the wide range of coastal and intertidal habitats found within the SPA including salt marshes, mud and sand flats, sandbanks, sea cliffs and rocky islands. Similarly the Isle of May SAC sustains the fourth-largest breeding colony of grey seals in the UK. These areas are afforded protection under the Habitats Directive 1992 as transposed by the Conservation (Natural Habitats, &c.) Regulations 1994.

It is the Scottish Executive’s understanding that Regulation 3 of the Conservation (Natural Habitats, &c.) Regulations 1994 requires competent authorities to have regard to the requirements of the Habitats Directive when considering proposals such as those for ship to ship transfers. We understand that the MCA recognise that they are a competent authority for the purposes of approving relevant contingency plans under The Merchant Shipping (Oil Pollution Preparedness, Response and
Co-operation) Regulations 1998 and that Forth Ports have acknowledged that they are a competent authority under the Habitats Directive when exercising their functions as the harbour authority.

Much of the debate on the Firth of Forth proposal has revolved around how well domestic legislation provides for regulation of Ship to Ship transfers in accordance with the Habitats Directive. As stated earlier, the Scottish Executive understands that Regulation 3 of the Conservation (Natural Habitats, &c.) Regulations 1994, provides a general duty on the Competent Authority, Forth Ports Plc, to have regard to the requirements of the Habitats Directive for Ship to Ship transfers. Though the recent consultation on potential improvements to the Conservation (Natural Habitats, &c.) Regulations 1994 in Scotland did not propose amendments in relation to Ship to Ship transfers, the Scottish Executive will assess responses prior to laying draft amendments before Parliament that improve transposition of the Habitats Directive into domestic legislation to comply with ECJ ruling C-6/04.

Yours sincerely

DAVID MALLON
Marine Management Division
Your Ref: RN/PN/EL20/1

Date: 31 July 2006

Dear Sirs,

KIMO UK COMMENTS IN SUPPORT OF PE 956 REGARDING THE PROPOSED SHIP TO SHIP TRANSFERS OF OIL IN THE FIRTH OF FORTH

I am writing in my capacity as President of KIMO International and Chair of KIMO UK\(^1\) to raise our concerns regarding the threatening proposal to undertake ship-to-ship transfers of Russian oil in the Firth of Forth by the Forth Port Authority and Melbourne Marine Ltd.

We have also sent our response by e-mail to assist you to include our comments in other documents if necessary. KIMO has no objections to our comments being made public.

Based on the documents, which we have reviewed to date, KIMO UK has serious reservations regarding the measures, which are being proposed to protect the marine environment from the impacts from the proposed ship-to-ship transfers within the designated harbour area in the Firth of Forth.

Significant deficiencies have been highlighted by Scottish Natural Heritage (SNH), Fife Council, RSPB and other organisations and individuals about the contingency planning, including technical and safety issues, risk assessments and how the environmental impacts have been assessed.

\(^1\) KIMO UK is a constituent network of KIMO International, an organisation that consists of 112 coastal local authorities in 9 countries in Northern Europe representing over 6 million inhabitants. The organisation holds observer status in the North Sea Ministerial Conference process where we were a member of the Special Interest Group on Sustainable Shipping (IGSS). We are also observers at OSPAR and at IMO (as part of the WWF delegation). This is also an issue that has caused considerable concern to our members in KIMO Denmark.

KIMO UK meets on a quarterly basis and our concern reflects discussions and representations made to these meetings by external experts and member authorities. KIMO UK was represented at a meeting (11/12/03) with the MCA is Southampton regarding Ship-to-Ship transfers in Lyme Bay. KIMO UK also actively participated in the National Dialogues in the development (1999) and revision (2005) of the UK National Contingency Plan for Marine Pollution.
After careful consideration of the possible implications of even a small oil spill in this sensitive area KIMO UK would like to support the comments made by other maritime local authorities in the Firth of Forth and in particular those submitted to the MCA consultation by Fife Council.

KIMO UK believes that due to the increasing volumes of crude oil and other hydrocarbons being exported through the Baltic and Barents Sea’s ship-to-ship transfers of heavy oil will become increasingly common around the North Sea. Such operations represent a significant pollution threat to UK and North Sea coastal waters. It is therefore paramount that all applications to carry out ship-to-ship transfers include an Environmental Impact Assessment, have a contingency plan which covers the worst-case scenario spill, require the provision of tugs and emergency response vessels on station with the capacity to deal with a worst case scenario for the duration of the transfer and that the local authority(s) are included in the decision making process at the earliest opportunity.

KIMO UK would like to express its dissatisfaction with the scope and nature of the MCA consultation. It is our view that the consultation was neither fair nor transparent as respondents are constrained to commenting on the adequacy of the oil spill contingency plans and not the underlying principle of whether ship to ship oil transfers should be taking place at all in the Firth of Forth. It is also not acceptable that, under current procedures, the MCA cannot refuse a proposal such as this but can only request further amendments to the oil spill contingency plan.

The lack of transposition of the Habitats Directive into UK law has implications for the UK Government in the approval of ship to ship transfer operations in the Firth of Forth. Therefore we have particular concerns whether the decision making procedure would stand up to legal scrutiny not withstanding that the Merchant Shipping (Ship to Ship Transfers) Regulations 1999 remain in draft form. The lack of an effective regulatory framework inevitably means that that those engaged in STS activities lack proper accountability. It will also prove difficult to apply strict liability in the event of any breach of the draft regulations.

Specific Comments on the Oil Contingency Plan

A fundamental measure to prevent accidents or the release of oil during operations must be the provision of tugs and emergency response vessels on station with the capacity to deal with a worst-case scenario for the duration of the transfer. The advantage of the operations at Sullom Voe and at Scapa Flow is that these measures are very close to hand and in the case of Sullom Voe the transfers are undertaken side by side at a jetty where these measures are permanently in place. The MSS proposal is very much different and is in open water with a significant time lapse in response time. We do not believe that the plan accounts for this and the availability of tugs to assist with manoeuvring operations and the current proposal that tugs would only be on station for berthing/un-berthing operations is not acceptable. The provision for tugs to provide emergency handling of STS vessels if they become separated for any reason, break
free from their anchors, or drift without power as has happened elsewhere in the Forth in recent years is certainly not, in our view, good practice.

The availability of tugs for emergency manoeuvres is further compromised due to the operational restrictions at Leith Docks at Low Water and MMS have consistently failed to provide assurances on how they would overcome these problems. MMS have also declined to confirm transit times for tug deployment, particularly from Leith at Low Water, or from other working areas upriver to the M1/M2 anchorages?

This is wholly unsatisfactory and at complete variance with operational arrangements for hydrocarbons transfers of ships at permanent facilities elsewhere in the Firth of Forth such as the Hound Point Marine Terminal and Braefoot Bay Marine Terminal where dedicated tugs are in constant attendance, able to intervene immediately in the event of developing problems.

A general impression gained from the various documents is that the assessment of impacts is under-played. It is accepted that major spills are likely to have a serious impact, but because these are perceived as low risk (in terms of likely occurrence) they are discounted from thorough assessment. Smaller spills are considered unlikely to have a serious impact. This is erroneous and misleading.

Compensation

The experience of cleaning up oil spills in other coastal areas of the UK in recent years confirms that the local authorities involved have encountered significant difficulties in attempting to recover costs incurred by them or to obtain compensation where appropriate. KIMO UK is well aware of the liability regimes that are currently in place and where some of our members have had first hand experience of the difficulties of claiming compensation in the past. This is particularly the case when damage is hard to quantify or where the IOPC has failed to pay out for expenses in the past. Similar difficulties would arise in the Firth of Forth as the result of a spill from STS operations.

Conclusions

In reviewing all the documentation relating to the MCA consultation regarding the ship to ship proposals for the Firth of Forth, including taking into account the overwhelming evidence that there is an unacceptable risk of potential damage to this vulnerable coastal environment which has been nationally and internationally recognised with several high profile nature designations to protect it, KIMO UK believes that this proposal must not be authorised. It is therefore disappointing that the MCA have indicated that they will approve the Plan subject to some changes.

KIMO UK is of the opinion that jurisdiction on whether the proposal can proceed does not rest solely under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, which implement the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC, 1990). The EU Habitats Directive 92/43/EEC may have implications for the approval of ship to ship transfer operations in the Forth due to the proximity of several designated sites. The UK Transport Minister this spring acknowledged the importance of the Forth by designating several Marine Environment High Risk Areas (MEHRA's). Therefore the
Scottish Executive jurisdiction may supersede the requirements of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998.

In addition to the obvious risks from oil pollution which should be covered by the Oil Contingency Plan but which we believe is deficient, currently no assessment that we are aware of, has been made with regard to the issue of the introduction of alien species into the Forth from the discharge of ballast water and we have asked SNH to consider this issue. We have also asked SNH to consider the threat of any introduced alien species migrating to other Scottish waters.

Article 6 para 2 of the Habitats Directive states that “Member States shall take appropriate steps to avoid (underlining is our emphasis), in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.”

Para 3 states that “Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.

Finally Para 4 states “If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.”

There is no over riding public interest to undertake these operations in the Forth as none of the oil to be transferred is destined for Scotland or the UK. In the event of even small spills, there will be a negative impact on the environment, social and economies and well being of the estuary. There is also no absence of alternative solutions to the proposal to undertake ship to ship transfers in the Forth, as the current infrastructure at Scapa Flow in Orkney and at the Sullom Voe Terminal in Shetland can more than adequately accommodate these activities in sheltered waters with robust environmental controls.

It is our view that the Scottish Executive has the powers, should it wish to use them, to stop this proposal under COUNCIL DIRECTIVE 92/43/EEC. Now that the MCA have approved the Plan it is important that the Parliament and Executive move quickly to stop this proposal and we urge the Committee to support the petition and recommend this option to the appropriate Scottish Executive Minister.

Yours faithfully,

Councillor Angus Nicolson
Mr Richard Hough,
Assistant Clerk to the Petitions Committee,
TG 01,
Parliamentary Headquarters,
Edinburgh,
EH99 1SP.

Dear Mr Hough,

Consideration of Petition PE956.

Thank you for your letter dated 14th November, 2006, enclosing the responses from relevant organisations. The amount of time and effort that has been put into these responses is much appreciated.

The responses merely substantiated the fears of the people and justify the overwhelming expressions of horror and disbelief of Forth Ports PLC proposals to allow ship-to-ship oil transfers in the Forth.

During the summer period more and more visitors have wished to add their voices to the petition which was presented. The anger is widespread throughout Scotland that a profit making company has more control over the Firth of Forth than our own elected representatives in our own Scottish Parliament.

Forth Ports PLC has always been highly respected. No doubt respect is given in Dundee and Tilbury and no doubt the company also enjoys respect in St Petersburg (Russia), Kotka (Finland) and Helsinki; where the company has a 50 percent equity stake in Multi-link Terminals Limited; a container terminal operator in Helsinki. That respect has suffered a substantial blow with their proposals to allow Melbourne Marine Services to conduct ‘ship to ship’ oil transfers in such an environmentally rich asset of our country.

Our feelings are personal in as much as we the people give our time voluntarily to keep our beaches clean, with the blessing of our council, who provide the tools, and under the organisation of the Marine Conservation Society, we turn out four times a year to scour our beaches of litter. All over the Forth people clean up daily for the sake of the marine and bird life which is killed or maimed by litter and for Pride in Scotland.
We, the people, who give unstintingly so much of our time to this work throughout the year, have acquired knowledge which surpasses theory, of the effects of currents, wind directions, ground swells, storms et cetera on our beaches. We know just what and where oil spills, flotsam and other debris will make land and that there is no place safe along the shores of the Firth of Forth.

Our Forth is more important than a highway for the passage of ships controlled by Forth Ports PLC. It is a ‘National Treasure’ providing the people of both Fife and the Lothians with much needed income from leisure and tourist sources. Which is the more important, this vulnerable asset for the people of Scotland or profit for one privately owned company?

There has been much talk on the subject, not only by the Marine and Coastguard Agency, the Scottish Executive and Forth Ports PLC regarding the fact that Forth Ports PLC is the competent authority for the Firth of Forth. Forth Ports PLC have also acknowledged this point on many occasions. If this is so, then the question that needs answering, is why Forth ports PLC have abrogated this responsibility over to Melbourne Marine Services, who in turn have also handed responsibility for control of pumping operations over to the Master of the pumping vessel? See Aquatera Environmental Statement, Revision 2, para 7.1.7 and table 7.1.3, also Melbourne Marine Services Contingency Plan, dated November 2005 para 3.2.1.

We therefore require you, our elected Executive to listen to MSPs, MPs, MEPs, Councils, Councillors and Specialist Environmental Groups and we the people to block this proposal through use of EC (Habitats) Directive 1994 (transposed into UK law by the Habitats Regulations, Regulation No 48).

Yours sincerely,

(Mary Douglas)
(on behalf of the people)
## SSI DESIGNATION FORM

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<td>15(^{th}) January 2007</td>
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<tr>
<td>SE Contact</td>
<td>Mary Lourie, 44403</td>
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<td>Committee Contact</td>
<td>Mark Brough, 85240</td>
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[ssi designation form](#)
2006 No. 576

PESTICIDES

The Plant Protection Products (Scotland) Amendment (No. 3) Regulations 2006

Made - - - - 29th November 2006
Laid before the Scottish Parliament 30th November 2006
Coming into force - - 22nd December 2006

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Plant Protection Products (Scotland) Amendment (No. 3) Regulations 2006 and shall come into force on 22nd December 2006.

Amendment of the Plant Protection Products (Scotland) Regulations 2005

2. The Plant Protection Products (Scotland) Regulations 2005(b) are amended in accordance with regulations 3 and 4.

Amendment of regulation 2 (interpretation)

3. In regulation 2 (interpretation) in paragraph (1) for the definition of “the Directive” substitute—


(a) by the instruments listed in Part I of Schedule 1 to these Regulations;
(b) from 1st January 2007, by the instrument listed in Part II of Schedule 1 to these Regulations;
(c) from 1st February 2007, by the instruments listed in Part III of Schedule 1 to these Regulations;
(d) from 1st April 2007, by the instruments listed in Part IV of Schedule 1 to these Regulations;
(e) from 1st August 2007, by the instrument listed in Part V of Schedule 1 to these Regulations;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15. The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
(b) S.S.I. 2005/331, as amended by S.S.I. 2006/241 and 449.
(f) from 1st November 2007, by the instrument listed in Part VI of Schedule 1 to these Regulations;

(g) from 1st December 2007, by the instrument listed in Part VII of Schedule 1 to these Regulations; and

(h) from 1st February 2008, by the instrument listed in Part VIII of Schedule 1 to these Regulations.”.


“SCHEDULE I

INSTRUMENTS AMENDING COUNCIL DIRECTIVE 91/414/EEC

PART I

Instruments in force

<table>
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<tr>
<th>Instruments</th>
<th>Active substances added to Annex 1</th>
</tr>
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<tbody>
<tr>
<td>Commission Directive 93/71/EEC(a)</td>
<td>None</td>
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<tr>
<td>Commission Directive 94/37/EC(b)</td>
<td>None</td>
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<td>Commission Directive 94/79/EC(c)</td>
<td>None</td>
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<td>Commission Directive 95/35/EC(d)</td>
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<td>Commission Directive 95/36/EC(e)</td>
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<td>Commission Directive 96/12/EC(f)</td>
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<td>Commission Directive 96/46/EC(g)</td>
<td>None</td>
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<tr>
<td>Commission Directive 96/68/EC(h)</td>
<td>None</td>
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<tr>
<td>Council Directive 97/57/EC(i)</td>
<td>None</td>
</tr>
<tr>
<td>Commission Directive 2000/80/EC(j)</td>
<td>imazalil, azoxystrobin, kresoxim-methyl, spiroxamine, azimsulfuron, fluoroxypr, metsulfuron-methyl, prohexadione-calcium, triasulfuron, esfenvalerate, bentazone and lambda-cyhalothrin</td>
</tr>
<tr>
<td>Commission Directive 2001/21/EC(k)</td>
<td>amitrole, diquat, pyridate and thiabendazole</td>
</tr>
<tr>
<td>Commission Directive 2001/36/EC(m)</td>
<td>None</td>
</tr>
</tbody>
</table>

(a) O.J. No. L 221, 31.8.93, p.27 (as read with corrigenda published in O.J. No. L 4, 6.1.96, p.16).
(b) O.J. No. L 194, 29.7.94, p.65.
(c) O.J. No. L 354, 31.12.94, p.16 (as read with corrigenda published in O.J. No. L 280, 23.11.95, p.58).
(d) O.J. No. L 172, 22.7.95, p.6.
(e) O.J. No. L 172, 22.7.95, p.8.
(f) O.J. No. L 65, 15.3.96, p.20.
(g) O.J. No. L 214, 23.8.96, p.18.
(h) O.J. No. L 277, 30.10.96, p.25.
(i) O.J. No. L 265, 27.9.97, p.87.
(k) O.J. No. L 69, 10.3.01, p.17.
(l) O.J. No. L 113, 24.4.01, p.5.
(m) O.J. No. L 164, 20.6.01, p.1.
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<tr>
<th>Instruments</th>
<th>Active substances added to Annex I</th>
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<tbody>
<tr>
<td>Commission Directive 2001/47/EC(a)</td>
<td><em>Paecilomyces fumosoroseus</em></td>
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<td>Commission Directive 2001/49/EC(b)</td>
<td>flupysulfuron-methyl</td>
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<tr>
<td>Commission Directive 2001/87/EC(c)</td>
<td>aclibenzolar-s-methyl, cyclanilide, fenclophos, pymetrozine and pyraflufen-ethyl</td>
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<tr>
<td>Commission Directive 2001/99/EC(d)</td>
<td>glyphosate and thifensulfuron-methyl</td>
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<tr>
<td>Commission Directive 2001/103/EC(e)</td>
<td>2,4-dichlorophenoxy acetic acid</td>
</tr>
<tr>
<td>Commission Directive 2002/18/EC(f)</td>
<td>isoproturon</td>
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<tr>
<td>Commission Directive 2002/37/EC(g)</td>
<td>ethofumesate</td>
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<tr>
<td>Commission Directive 2002/48/EC(h)</td>
<td>iprovalicarb, prosulfuron and sulfosulfuron</td>
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<tr>
<td>Commission Directive 2002/64/EC(i)</td>
<td>cinidion-ethyl, cyhalofop-butyl, famoxadone, florasulam, metalaxyl-M and picolinafen</td>
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<tr>
<td>Commission Directive 2002/81/EC(j)</td>
<td>flumioxazin</td>
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<tr>
<td>Commission Directive 2003/5/EC(k)</td>
<td>deltamethrin</td>
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<tr>
<td>Commission Directive 2003/31/EC(m)</td>
<td>2,4-DB, beta-cyfluthrin, cyfluthrin, iprodione, linuron, maleic hydrazide and pendimethalin</td>
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<tr>
<td>Council Regulation (EC) No. 806/2003(n)</td>
<td>None</td>
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<tr>
<td>Commission Directive 2003/39/EC(o)</td>
<td>proponeb and propyzamide</td>
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<tr>
<td>Commission Directive 2003/68/EC(p)</td>
<td>trifloxystrobin, carbenztriazole-ethyl, mestrone, fenamidone and isoxaflutole</td>
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<tr>
<td>Commission Directive 2003/70/EC(q)</td>
<td>mecoprop, mecoprop-P and propiconazole</td>
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<tr>
<td>Commission Directive 2003/79/EC(r)</td>
<td><em>Coniothyrium minitans</em></td>
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<tr>
<td>Commission Directive 2003/81/EC(s)</td>
<td>molinate, thiram and ziram</td>
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<tr>
<td>Commission Directive 2003/82/EC(t)</td>
<td>None</td>
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<tr>
<td>Commission Directive 2003/84/EC(u)</td>
<td>flurtamone, flufenacet, iodosulfuron, dimethenamid-p, picoxy-strobin, fosthiazate and silthiofam</td>
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(a) O.J. No. L 175, 28.6.01, p.21.
(b) O.J. No. L 176, 29.6.01, p.61.
(c) O.J. No. L 276, 19.10.01, p.17.
(e) O.J. No. L 313, 30.11.01, p.37.
(f) O.J. No. L 55, 26.2.02, p.29.
(g) O.J. No. L 117, 4.5.02, p.10.
(h) O.J. No. L 148, 6.6.02, p.19.
(i) O.J. No. L 189, 18.7.02, p.27.
(j) O.J. No. L 276, 12.10.02, p.28.
(k) O.J. No. L 8, 14.1.03, p.7.
(l) O.J. No. L 81, 28.3.03, p.39.
(m) O.J. No. L 101, 23.4.03, p.3.
(o) O.J. No. L 124, 20.5.03, p.30.
(q) O.J. No. L 184, 23.7.03, p.9.
(s) O.J. No. L 224, 6.9.03, p.29.
(t) O.J. No. L 228, 12.9.03, p.11.
(v) O.J. No. L 321, 6.12.03, p.32.
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<th>Instruments</th>
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<tr>
<td>Commission Directive 2003/119/EC(a)</td>
<td>mesosulfuron, propoxycarbazone and zoxamide</td>
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<td>Commission Directive 2004/20/EC(b)</td>
<td>chlorpropham</td>
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<tr>
<td>Commission Directive 2004/30/EC(c)</td>
<td>benzoic acid, flazasulfuron and pyraclostrobin</td>
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<tr>
<td>Commission Directive 2004/58/EC(d)</td>
<td>alpha-cypermethrin, benalaxyl, bromoxynil, desmedipham, ioxynil and phenmedipham</td>
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<tr>
<td>Commission Directive 2004/60/EC(e)</td>
<td>quinoxyfen</td>
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<tr>
<td>Council Directive 2004/66/EC(g)</td>
<td>None</td>
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<tr>
<td>Commission Directive 2004/71/EC(h)</td>
<td><em>Pseudomonas chlororaphis</em></td>
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<td>Commission Directive 2005/2/EC(j)</td>
<td><em>Ampleomyces quisqualis</em> and <em>Gliocladium catenulatum</em></td>
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<td>Commission Directive 2005/34/EC(m)</td>
<td>etoxazole and tepraloxydim</td>
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<tr>
<td>Commission Directive 2005/53/EC(n)</td>
<td>chlorothalonil, chlorotoluron, cypermethrin, daminozide and thiophanate-methyl</td>
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<tr>
<td>Commission Directive 2005/54/EC(o)</td>
<td>tribenuron</td>
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<tr>
<td>Commission Directive 2005/57/EC(p)</td>
<td>MCPA and MCPB</td>
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<tr>
<td>Commission Directive 2005/58/EC(q)</td>
<td>bifenazate and milbemectin</td>
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<tr>
<td>Commission Directive 2006/10/EC(r)</td>
<td>forchlorfenuron and indoxacarb</td>
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<td>Commission Directive 2006/19/EC(s)</td>
<td>1-methylcyclopropene</td>
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<td>Commission Directive 2006/45/EC(t)</td>
<td>None</td>
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<tr>
<td>Commission Directive 2006/76/EC(u)</td>
<td>None</td>
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(a) O.J. No. L 325, 12.12.03, p.41.
(b) O.J. No. L 70, 9.3.04, p.32.
(c) O.J. No. L 77, 13.3.04, p.50.
(f) O.J. No. L 125, 28.4.04, p.38.
(g) O.J. No. L 168, 15.5.04, p.35.
(h) O.J. No. L 127, 29.4.04, p.104.
(i) O.J. No. L 309, 6.10.04, p.6.
(j) O.J. No. L 20, 22.1.05, p.15.
(k) O.J. No. L 20, 22.1.05, p.19.
(l) O.J. No. L 90, 8.4.05, p.1.
(m) O.J. No. L 125, 18.5.05, p.5.
(n) O.J. No. L 241, 17.9.05, p.51.
(o) O.J. No. L 244, 20.9.05, p.21.
(q) O.J. No. L 246, 22.9.05, p.17.
(s) O.J. No. L 44, 15.2.06, p.15.
(t) O.J. No. L 130, 18.5.06, p.27.
(u) O.J. No. L 263, 23.9.06, p.9.
PART II
Instruments coming into force on 1st January 2007

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<th>Active substances added to Annex I</th>
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<tr>
<td>Commission Directive 2005/72/EC(a)</td>
<td>chlorpyrifos, chlorpyrifos-methyl, mancozeb, mane, and metiram</td>
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PART III
Instruments coming into force on 1st February 2007

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<th>Instruments</th>
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<td>Commission Directive 2006/16/EC(b)</td>
<td>oxamyl</td>
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<td>Commission Directive 2006/41/EC(c)</td>
<td>clothianidin and pethoxamid</td>
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PART IV
Instruments coming into force on 1st April 2007

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<th>Active substances added to Annex I</th>
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<td>Commission Directive 2006/5/EC(d)</td>
<td>warfarin</td>
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<tr>
<td>Commission Directive 2006/6/EC(e)</td>
<td>tolylfluanid</td>
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<tr>
<td>Commission Direction 2006/75/EC(f)</td>
<td>dimoxystrobin</td>
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PART V
Instruments coming into force on 1st August 2007

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<th>Instruments</th>
<th>Active substances added to Annex I</th>
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<tbody>
<tr>
<td>Commission Directive 2006/39/EC(g)</td>
<td>clodinafop, pirimicarb, rimsulfuron, tolclofos-methyl and triticonazole</td>
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PART VI
Instruments coming into force on 1st November 2007

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<th>Instruments</th>
<th>Active substances added to Annex I</th>
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<tbody>
<tr>
<td>Commission Directive 2006/64/EC(h)</td>
<td>clopyralid, cypromidil, fosetyl and trinexapac</td>
</tr>
</tbody>
</table>

(a) O.J. No. L 279, 22.10.05, p.63.
(b) O.J. No. L 36, 8.2.06, p.37.
(c) O.J. No. L 187, 8.7.06, p.24.
(d) O.J. No. L 12, 18.1.06, p.17.
(e) O.J. No. L 12, 18.1.06, p.21.
(f) O.J. No. L 248, 12.9.06, p.3.
(g) O.J. No. L 104, 13.4.06, p.30.
(h) O.J. No. L 206, 27.7.06, p.107.
PART VII
Instruments coming into force on 1st December 2007

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<th>Instruments</th>
<th>Active substances added to Annex I</th>
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<tr>
<td>Commission Directive 2006/74/EC(a)</td>
<td>dichlorprop-P, metconazole,</td>
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<td></td>
<td>pyrimethanil and triclopyr</td>
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PART VIII
Instruments coming into force on 1st February 2008

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<th>Active substances added to Annex I</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission Directive 2006/85/EC(b)</td>
<td>fenamiphos and ethephon</td>
</tr>
</tbody>
</table>

Revocation

5. The Plant Protection Products (Scotland) Amendment (No.2) Regulations 2006(c) are hereby revoked.

ROSS FINNIE
A member of the Scottish Executive

St Andrew’s House, Edinburgh
29th November 2006

(a) O.J. No. L 235, 30.8.06, p.17.
(b) O.J. No. L 292, 24.10.06, p.3.
(c) S.S.I. 2006/449.
EXPLANATORY NOTE

(This note is not part of the Regulations)


These 4 Directives amend the specification of the active substance, chlorothalonil, and add 7 active substances to the list of active substances in Annex I of the Directive. The 4 Directives and the additional 7 active substances are therefore added to Schedule 1 to the principal Regulations by substituting the Schedule to these Regulations for Schedule 1 to the principal Regulations (regulation 4). In consequence the list of active substances which can be used in products capable of being approved under regulations 5 and 6 of the principal Regulations for placing on the market and use is extended accordingly.

Finally, the Regulations revoke the Plant Protection Products (Scotland) Amendment (No. 2) Regulations 2006 (S.S.I. 2006/449) which amended the principal Regulations and which amendment is superseded by these Regulations (regulation 5).

A full regulatory impact assessment has not been prepared in respect of these Regulations because they have no impact on the costs of business.
EXECUTIVE NOTE

THE PLANT PROTECTION PRODUCTS (SCOTLAND) AMENDMENT
(No. 3) REGULATIONS 2006 SSI/2006/576

POWERS

1. The Plant Protection Products (Scotland) Amendment (No. 3) Regulations 2006 (the Regulations) are made in exercise of the powers conferred upon the Scottish Ministers by section 2(2) of the European Communities Act 1972.

2. The Regulations amend the Plant Protection Products (Scotland) Regulations 2005 (SSI 2005/331) (the principal Regulations).

PARLIAMENTARY PROCEDURE

3. The Regulations are subject to negative resolution procedure.

POLICY OBJECTIVE

4. The principal Regulations implement Council Directive 91/414/EEC (as amended) (the Directive), concerning the placing of plant protection products on the market. The Directive establishes a system whereby plant protection products (mainly agricultural pesticides) may not be placed on the market or used unless they have been authorised and added to Annex 1 of the Directive.

5. The Regulations implement 4 Directives:

   • Commission Directives 2006/74/EC, 2006/75/EC and 2006/85/EC add a further 7 pesticide active substances to Annex 1 of the Directive

   • Commission Directive 2006/76/EC modifies the technical specification of the active substance chlorothalonil.

These 4 Directives are transposed by being added to the list in Schedule 1 to the Regulations which sets out the instruments that amend the Directive.

BACKGROUND

6. Active substances used in pesticides are evaluated at EU level and those that are found to be acceptable in terms of effects on people and the environment are authorised by means of inclusion in Annex 1 of the Directive. The Directive is continually updated and amended to include and thereby authorise new active substances. It is therefore necessary to amend the principal Regulations accordingly to include those newly authorised active substances. The approval of individual products remains the responsibility of individual Member States.
7. Only approved pesticides can be advertised, sold, supplied, stored or used. Applicants for pesticide approvals must show that their products are effective, humane and pose no unacceptable risk to people, non-target species or the wider environment before approval will be granted. Pesticide manufacturers are required to provide a wide range of scientific data, which are subject to rigorous scrutiny.

8. Until the completion of the EU review programme which aims to harmonize the registration of plant protection products throughout the European Community, estimated to be 2008, the Control of Pesticides Regulations 1986 (as amended) (COPR) will run in tandem with the principal Regulations in relation to those pesticides which currently have UK approval but have still to be evaluated at EU level.

ADMINISTRATIVE ARRANGEMENTS

9. The day to day administration of the plant protection products approval system pre and post devolution is undertaken by the Pesticides Safety Directorate, an Executive Agency of Defra operating on behalf of the Scottish Ministers under an Agency Arrangement. The arrangement rests on regulation 26 of the principal Regulations which provides that the Scottish Ministers may arrange for any of their functions under or for the purposes of the principal Regulations or the Directive to be exercised on their behalf by a Minister of the Crown.

FINANCIAL EFFECTS

10. No Regulatory Impact Assessment has been carried out in relation to the Regulations. The instrument has no financial effects on the Scottish Executive, local government or Scottish business.

Scottish Executive Environment and Rural Affairs Department
November 2006