

MINUTES OF MEETING

Project: P1861
Subject: Orkney Islands Council Oil Transfer Licence Consultee Comments
Date and Time: 28 January 2015, 11:00
Duration: 3.5 hours
Venue: SNH Offices, Edinburgh
Present: Stan Woznicki (MCA)
 David Sawkins (OIC)
 Gavin Barr (OIC)
 Graham Neville (SNH)
 Kate Thompson (SNH) - phone
 Alan Dundas (SEPA)
 Chris Mooij (Intertek)
 Emma Langley (Intertek)
 Fiona Bell (Intertek) - phone
 Leanne Page (MCA) - phone

Level of Issue: DRAFT
File Reference: P1861/ZJAN31
Distribution: All above

INTRODUCTION	
1.	GN: introduction to meeting. Aim is to provide further advice and clarification to the MCA to make an informed decision about Orkney Island Council's (OIC) Oil Transfer Licence (OTL). GB would like clarification on what issues are left to address.
2.	SW: Noted that regardless of the decision he makes he knows there will be fall-out. Progress was made on the 6 th January meeting. SW will listen to concerns raised in this meeting, and see how they can be mitigated/eased. SW has a meeting next week to discuss the OTL and the way ahead. SW will give his boss a feedback briefing on Friday (30 th Jan), who will want to know which way the application is going to go.
BALLAST WATER MANAGEMENT POLICY	
3.	GN: Ballast Water Management Policy (BWMP) has been adopted by OIC as the Competent Authority following HRA process; SNH's advice on this still stands. Unsure whether Scottish ministers will call in the BWMP. SNH is not suggesting more work be done on the BWMP. It is up to the MCA to decide whether to accept screening out of this issue, or carry out Appropriate Assessment (AA). GN advised that in the latter instance, MCA might wish to refer to the work done to support the AA for the BWMP, and advised that no further scientific modelling working would be necessary in relation to any AA. Therefore, SNH advises that their advice rests and the decision on this specific application now lies with the MCA.
4.	GB: there is no further scientific work to be done and the Council has made a decision based upon scientific analysis of all risks and demonstrated beyond reasonable doubt that there would be no impact on sites. OIC is in contact with Scottish Government about this. GB acknowledged everyone's help with the BWMP process.
LEANNE PAGE JOINED THE CALL	
5.	SW: SEPA do not feel the IMO D1 standard would be acceptable under any circumstances, but D2 would be.
6.	GB: highlighted that current policy is if treatment is available on a vessel, it will be used. We can't do any more than what we do in the BWMP. There's little you can do to advance that.

7.	Some general discussion took place with regards to the risk of call-in of the BWMP by Scottish Ministers.
8.	DS: background information on BWMP. The Council was reported to the Scottish Ombudsman in 2012 for not carrying out Strategic Environmental Assessment and AA process properly; this was a year before Council approved it. All four counts of 'not following procedure' were kicked out. Highlights there is a lot of background on this issue.
9.	GN: advised that the MCA should decide to screen in the BWM issue for AA, the previous hydrodynamic modelling would be applied to the AA. There is not much point in repeating the work again with BW screened back in.
10.	<p>AD: The risk posed by D1 is significant; D2 gives better level of protection.</p> <p>GB: OIC's BWMP is D1 + treatment; it's more than is required.</p> <p>DS: exchange is 95%; ships can't know exactly what they're discharging. Treatment systems were approved on design and are checked every 5 years to see what they're discharging.</p> <p>LP: IMO D2 standard is the best way forward. Nothing better than this.</p> <p>DS: OIC is actually going beyond the IMO regulations. D1 must be used and D2 if available. OIC is not querying the IMO D2 standard. Even with a treatment system the ship doesn't know exactly what it's discharging, as the treatment system is approved by design and initial testing, and not necessarily monitored between ship surveys i.e. every five years. With exchange (3x volume) a minimum of 95% efficiency is expected – in some respects the same principle as a treatment system i.e. there is no absolute test or check on what a ship discharges in practice. OIC is using both standards, so there's no uncertainty on the application.</p>
11.	<p>CM: difficult to define words like acceptable/unacceptable. Just because treatment to D2 will become more widely acceptable, that does not mean that D1 is unacceptable. OIC's BWMP has exchange in the most robust way (eastern exchange zone and deep waters). The option of widely available treatment is possible further down the line, but not practical to put in place today. Efficiency of removal of organism through exchange is roughly 85%. Treatment (D2) can be more consistent and more reliable in the long-term, but this doesn't mean exchange (D1) isn't acceptable. It was noted that in addition to D1 there were a whole range of management practices in the OIC BWMP. These all build to reduce the risk further.</p> <p>Perspective is important and it should be recognised that whilst there have been BW management issues throughout the globe, these have resulted from discharge of BW over many years. This is not the case for the OIC BWMP for the reasons stated above. Where measures such as exchange had been introduced to areas suffering from non-native species there is no evidence as to whether things had improved or at least not got worse to CM's knowledge.</p> <p>Therefore, in conclusion: whilst D2 provides a more reliable discharge concentration that should not infer that D1 is unacceptable. There is no evidence to support that statement.</p> <p>LP: there are different systems for treatment being used now, but there is no legal mechanism to enforce in the UK right now. Some ports insist that certain things are done.</p>
12.	<p>LP: the IMO Convention isn't actually changing the Standards; it's reviewing equipment assessment R.E. temperatures. It sounds like OIC is doing everything it needs to. Once Convention enters into force, D1 will be applicable until all vessels are required to meet D2. At this point, that part of the BWMP will be invalid and to undertake D1 will be an additional non-mandatory requirement for vessels which may mean that vessels may have to D2 treat twice on their voyage to comply with the Convention.</p> <p>CM: confirmed that under the OIC BWMP vessels will undertake exchange followed by treatment which exceeds the ultimate requirement of D2.</p> <p>SW: the whole thing is subjective, not objective. When we've had transfers in the past, D1 was acceptable.</p>
13.	KT: Scapa Flow (SF) is a receiving water with particular characteristics. In all the advice SNH has given, it's looking at SF's characteristics. Specifics about the location as well as the operation are crucial to assessing potential impacts.
14.	CM: other things to consider. BW has come on the agenda over the years. There has been lots of research done on sites about BW. The whole point of the appropriate assessment (AA) modelling was to recognise the characteristics of the water body.

15.	<p>AD: SEPA has no problem with D1 + D2. Still always a risk of invasive non-native species (INNS). On land, SEPA accepts best available technology approach.</p> <p>CM: D2 will be readily available sometime in the future, but does that mean that it is the only acceptable point now? We need to be careful when we talk about what's acceptable as a level of risk. Just because we perceive something better is out there it does not mean D1 is not acceptable. D1 is the best available technology at the moment in most circumstances. In the event that a vessel has a D2 treatment system, then D1+D2 is the best available technology. Therefore, the OIC BWMP is always making best use of the best available technology.</p> <p>GB: SEPA prefers the D2 standard, but our BWMP is saying better than that (D1+D2).</p> <p>SW: D1 is most commonly used. SEPA thinks it's too risky. Trying to get to a stage where everyone accepts a way forward. Nothing more that can be said about D1. Concerns about efficacy of D1 in this case. Other places they use D1 and it's not a problem. Because of SF's characteristics, SNH/SEPA have concerns which have been noted.</p> <p>CM: SEPA has remarked on the concentrations at the point of discharge. Both D1 and D2 will release hundreds of thousands of organisms. However, by placing the requirement on the point of discharge you are not taking any account of the characteristics of the environment because you are ignoring dispersion, advection, mortality etc. On that basis SEPA would need to apply the same rigour to all BW discharges wherever they are made in Scotland. That amounts to a policy decision but one that is only being applied to SF.</p> <p>AD: there is little difference between D1 and D2. SEPA would argue that there will be magnitudes of difference after passing through a D2 compliant treatment system.</p>
16.	<p>DS: OIC do not want to see the WFD status of SF downgraded, that is the point of doing all this work.</p> <p>EL: no list from SEPA to say what species are biggest risks.</p> <p>AD: this is probably a work in progress.</p> <p>AD: for specific marine NNS information go to Marine Scotland, for freshwater go to SEPA, and for terrestrial or wetland go to SNH.</p>
17.	<p>DS: SF is an environmentally sensitive place. Must implement the WFD the same as for other areas in Scotland.</p> <p>CM: the previous BWMP allowed vessels to discharge raw BW outside SF. A percentage of that discharge came back into SF. Therefore, SF hasn't been free from the influence of INNS and hasn't suffered as a result of this.</p>
18.	<p>LP: there have been lots of referrals to D1 (refers to removal of NNS species issue). Need to be careful as D1 only relevant to NNS and doesn't refer to other pollutants. The timescale is quite short for D2 coming in. This wouldn't be a huge impact to operators as they're already looking at it coming onboard. BWM Convention likely to be ratified late 2015 or early 2016.</p>
LEANNE PAGE LEFT THE CALL	
19.	<p>CM: OIC/Intertek has thrown as much at this issue as possible.</p> <p>GN: advice from consultees allows the decision to be as robust as possible.</p>
Summary	<p>GN: advises it's up to the MCA as Competent Authority with respect to the OTL to decide if mitigation offered by BWMP is sufficient to conclude no likely significant effect (LSE).</p> <p>SNH does not believe further technical work can be done to support AA. SNH's advice on AA of OIC's BWMP still stands.</p> <p>AD: SEPA's advice on WFD still remains but decision rests with MCA.</p> <p>GN: Decision rests with MCA; the advice provided by statutory bodies is intended to assist competent authorities in coming to robust decisions.</p>

DRAFT SPECIAL PROTECTION AREA & HABITATS REGULATION APPRAISAL	
20.	<p>GN: SNH advises that the scope for the project needs to be clearly defined.</p> <p>SW: vessels come in and out of SF every day. The OTL application is only about STS transfer, so bringing vessels together and transferring cargo. It is not concerned with getting in or out of SF; this is covered under different regulations. The OTL application is purely to assess operational aspects of STS, the method of cargo transfer and its associated supporting procedures, the mitigation in place to prevent incident and the contingency plans in place to respond to a spill should it occur.</p> <p>GN: Case law in Europe may indicate that presence of vessel is part of the project and may need to be included, but it is for the MCA as the Competent Authority to decide.</p>
21.	<p>GN: Given the MCA's stated view of the scoping of the project, SNH's advice on wider oil spill risk will be parked. Therefore, we're just looking at the incidence happening whilst transferring cargo. More work could be done under AA to make assessment/decision more robust, but it is up to the Competent Authority to decide this.</p>
22.	<p>GN: regarding shadow Habitats Regulation Appraisal (HRA) for the dSPA – we understand these further sites won't be consulted on until June or July 2015, so accept OIC's position, given timescales, that there is no requirement for a shadow HRA. It is the MCA's decision if a shadow HRA is required. The risk of this, however, is that the assessment may need to be done at a later date if the OTL is granted and dSPA designated following post-classification review of consents, as required under the Habitats Regulation.</p> <p>SW: Why not get the Shadow HRA done now so it can be used if asked about it in the future? How much work is involved in doing this? Or can we not do a Shadow HRA until asked.</p> <p>GB states categorical view of OIC on the matter is the draft SPAS have no status at present and OIC likely to challenge very extensive areas proposed. No certainty will reach that stage so will not support consideration now.</p>
23.	<p>CM: the OTL says that if there is an oil spill, it will cause a problem. Bigger the oil spill, the bigger the problem. Mitigation is prevention. The likelihood of an oil spill is small so it can be contained. If a big oil spill occurs the likelihood is that this wasn't due to the STS transfer process but rather a national incident.</p> <p>In the Shadow HRA the issues and conclusions are likely to be the same as for other SPAs in the HRA screening. It's a sensitive area and any oil spill will cause problems. Would SNH expect conclusions to change from where we are now?</p> <p>GN: The dSPAs don't have the same data as existing SPAs and don't have final approved conservation objectives. SNH can provide information to assist any assessment. Shouldn't be an onerous task to do the AA.</p> <p>CM: if the shadow HRA is done, it's hard to see how we'll arrive at a different conclusion.</p> <p>SW: doesn't see this as a huge issue. We would have to re-analyse entire shipping patterns in the Pentland Firth; the dSPA is enormous if designated.</p> <p>CM: doing a Shadow HRA isn't a game changer for this OTL application.</p> <p>DS: everyone accepts that a Shadow HRA may be needed in the future.</p> <p>GN: it is the Competent Authority's decision to undertake one or not.</p> <p>SW: given the extent of the modelling and the potential risk, a Shadow HRA is not directly related to activity.</p>
24.	<p>SW to decide if a shadow HRA is needed.</p>
25.	<p>SW: advises that whether a spill is classed as Tier 1, 2 or 3 is not about the size of an oil spill per se, but about the effect and that Tier 1 is defined as a spill that can be handled at the site of spill, without need for additional resources to be mobilised.</p> <p>GN: setting aside the size of spill, SNH's advice is that there is a need for AA for interests SNH has identified. The MCA has indicated the narrower scope of project definition and therefore the advice in relation to larger spills is no longer required.</p>

26.	<p>SW: tier 1 oil spill response can be handled by polluter himself (i.e. resources immediately to hand, may be as little as a map and bucket). Tier 2 is anything above that, where Tier 1 resources are overwhelmed. Tier 3 is a national response and one almost imporbable when dealing with STS operations of this nature as the volume of spill is so small. OIC may want mitigation to prevent a spill and a range of contingent oil spill response capability to respond to it; part of this could be supplied by the STS Provider selected. A one tonne spill is a hose burst; it's not realistic to look at a 100,000 tonne spill.</p> <p>SW: Max oil spill possible is 1,000 kg. This is what should be assessed. Concluded that AA not required for draft SPA.</p>
APPROPRIATE ASSESSMENT	
27.	<p>KT: SNH believes an AA is required. The SPAs have high levels of connectivity with SF so may be affected by an oil spill. Certain species must be assessed further (see SNH consultation response letter for further detail).</p> <ul style="list-style-type: none"> - breeding red-throated diver interests: 50-60 nest on inlands but feed at sea, come into sheltered waters to get fish, vulnerable to how they move in water and oil spill. Contact JNCC (Julie Black) – has done work on divers in Hoy. - breeding guillemot interests: aerial survey data shows use of Scapa Flow by young guillemots. Chicks remain on ledges for 15-20 days, then escorted by male parent. So they're flightless when first at sea, so very vulnerable to oil spill. Look at populations and risks from aerial surveys. They leave cliffs in Orkney late June/July, so could build something into assessment about this vulnerability and reduce oil spill risk at that time of year. Mitigation wasn't specific enough regarding sensitivities in SF. Look at source of these impacts.
28.	<p>SW: does SNH's concern reduce as we're not talking about the size of the spill.</p> <p>KT: worried about response times, not quick enough to prevent damage so you can't conclude no impact on site integrity. AA stage is demonstrating something (i.e. impact on site integrity) won't happen.</p> <p>SW: nothing can be taken down to zero risk.</p> <p>KT: no it can't. OIC/Intertek needs to look at species biology and focus on conservation objectives for these sites (available on SNH website, some sites have similar conservation objectives).</p> <p>SW: these SPAs are remote compared to where operations will take place.</p> <p>KT: the key point is that these birds are mobile and they do move around; some species can travel 100 km to feed during breeding season. You can't rule this out due to connectivity. This is the first step in determining 'likely significant effect'.</p>
29.	<p>SW: there is no such thing as 'it's never going to happen'. Things have been screened out and SNH wanted them brought back in. If that's done and we come up with potential risks and mitigation, it's up to SW to decide if these risks are acceptable.</p>
30.	<p>EL: SNH doesn't think the mitigation is accurate. In screening process you still look at mitigation.</p> <p>GN: if something is screened out, you are saying there is no possible effect given the mitigation proposed. SNH thinks there may be an effect, so may need an AA. The AA enables you to assess if the mitigation is sufficient to reduce risks to an acceptable level.</p>
31.	<p>CM: SNH said the size of an oil spill isn't relevant. We have talked about a maximum spill of one tonne, which is unlikely. The likelihood of a bigger spill is even smaller. Therefore, we must recognise that likelihood goes down as size of spill goes up.</p> <p>SW: there is a small likely significant effect (LSE). For larger spills which are rare, probability becomes less and likelihood is very small, making it hard to quantify.</p>
32.	<p>SW: is SNH wanting to look at how much Red Throated Divers will be affected?</p> <p>KT: have to look at conservation objectives for individual features if doing an AA.</p> <p>GN: SNH is happy to assist either OIC or the MCA in providing information to assist in carrying out AA. Reiterate that it is very important that any assessment is specific to the sites and features considered and can demonstrate that mitigation reduces risks to an acceptable level (i.e. where competent authority is satisfied that the requirement of no impact on site integrity is met).</p>

33.	DS: if oil is spilt at STS1 and wind/tide is in right direction and it happens to hit Hoy, we need to know what LSE that will have.
34.	CM: we are trying to assess whether an oil spill will impact site integrity beyond reasonable scientific doubt.
35.	GB: is it a simple exercise to look at these species? The risks are so low. SW: the information which must be looked at already exists, just needs to be brought in to the volume of work. GB: write statement to say we've thought about this, and these are an acceptable way of looking at these issues.
36.	EL: in terms of the mitigation, would information be required in terms of how long it would take to stop the spill?
37.	SW: nobody has a clear idea of the risks involved in STS. OIC has its own capability as does the vessel operator. It is this capability and operational procedures that make up the mitigation.
38.	GB: we need to demonstrate to SW we've looked at all these issues
39.	GN: do assessment of mitigation against conservation objectives. SNH can point OIC/Intertek towards relevant data to add to assessment. SNH will provide guidance for this assessment.
40.	EL: what are we doing about dSPA shadow HRA? DS: there's a possibility it may have to be done; it may be required as and when the dSPA is approved but not now. SW: If OTL is consented a caveat can go in OTL consent letter, that a partial re-assessment may be required to include any probationary legislation, however an AA for the draft SPA is not required at this stage. GN: this is entirely a decision for the MCA as the Competent Authority. EL: the designated features may change. SW: hasn't seen the dSPAs laid out on a map. AD: no comments.
41.	EL: is Loch of Stenness included in the assessment too? GN: AA is required for various existing SPAs and for Loch of Stenness SAC with respect to oil spill risk. SNH will contact OIC/Intertek to advise.
42.	SW: what is the timescale for all this? CM: this will depend on data etc. KT: will send links, all information is already there. Will send end of this week/start of next week and will treat as a priority.
43.	GN: assessment scope out quickly and SNH will treat as priority. SW: when will the AA be available? EL: could be a month, this includes 2 weeks to get data together. SW: would like this by end of January. There will be raised eyebrows if we're talking more than 2 weeks. SW will be asked on Friday for an answer on this. GB: simple collation of information shouldn't take more than a couple of days. GN: SNH will treat it as a priority. EL: do we need to undertake a 20-day consultation on the revision? SW: no, due to nature of the comments made during consultation, the subsequent discussions undertaken between parties and the resulting work being undertaken to refine the AA. Because of all these, the resulting product is designed solely to provide the most robust AA based on all relevant information. The additional information, assessment and conclusion, when reviewed in concert with the original Application data will allow the Competent Authority to make a fully informed decision. GN: it is up to the MCA whether to consult or not SW: Refined AA datasets to be emailed to MCA and copy in SNH and SEPA for information.

VOLATILE ORGANIC COMPOUNDS (VOCS)	
44.	<p>AD: VOCs should have been considered in further detail in OTL application. Some oil contains more VOCs than others.</p> <p>CM: VOCs are covered in assessment.</p> <p>SW: normally they are not considered, as this is a safety issue rather than STS issue; VOCs aren't a product of a STS. Venting of VOCs is required for all cargos.</p>
45.	<p>CPM: we can look at VOC emissions, wind roses, etc. However, it won't give you an answer. It's already going on in Scapa Flow.</p> <p>SW: effects from VOCs are extremely local in effect.</p> <p>AD: SEPA is happy to park this but may become an issue later.</p>
WAY FORWARD	
46.	<p>Send additional work to MCA, cc SNH/SEPA. Issue as an appendix to original OTL Application. Update front section of the OTL application to reference new AA work.</p> <p>CPM: the conclusion will say <i>"there is a LSE, so we have undertaken an AA. The conclusions of the AA are..."</i></p>
SUMMARY	
47.	Natura NNS Loch of Stenness SAC BW treatment – SNH acknowledges the BWMP is there and it's up to the MCA to decide if it provides appropriate mitigation with respect to the OTL application.
48.	SEPA advice on WFD has been provided; SW has this.
49.	SPA issues – SNH advises the need for AA, which is accepted by the Competent Authority. Liaise with SNH/Intertek/OIC, SNH will provide information to scope the AA and will provide data sources, etc.
50.	Issue of dSPA – the MCA has concluded that shadow HRA won't be required.
51.	VOCs issues – won't be included in the OTL application.