

marinescotland

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The Scottish Government
Riaghaltas na h-Alba

Councillor Craig Fraser (SNP)
Ward 10: Black Isle



LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

28 October 2016

Dear Councillor Fraser,

Thank you for your letter of the 1st July 2016 regarding the Cromarty Firth Port Authority Oil Transfer Licence application. I apologise for the delay in replying while we investigated this matter.

Ship to ship oil transfers are regulated by the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (as amended) which came into force on 31 March 2012. These regulations do not provide a role for Scottish Ministers in the granting of oil transfer licences to harbour authorities. The Regulations are made under section 130 of the Merchant Shipping Act 1995 and the subject matter of that Act is currently reserved to the UK Government. The decision on whether to issue an oil transfer licence in Scottish waters is therefore for the UK Government's Secretary of State for Transport.

Marine Scotland is part of the core Scottish Government, and neither Marine Scotland nor the Scottish Government is listed as a consultee in the Port of Cromarty Firth application, nor are we included to receive representations made to this application- as the competent authority is the Maritime and Coastguard Agency (MCA). The Scottish Government does not have the same status and statutory responsibilities as NDPBs such as SNH on reserved matters.

I am confident that SNH and SEPA, as statutory consultees, highlighted potential risks to the marine environment from the application. In particular, SNH focussed on possible risks to designated European sites, including the Moray Firth Special Area of Conservation and the requirement under the Habitats Regulations to ensure no adverse effect on the integrity of these sites. The Scottish Government expects the MCA to take advice given by SNH and SEPA as statutory consultees fully into account before making recommendations to the UK Secretary of State for Transport.

Your letter has asked for your concerns to be raised as a formal complaint. The Scottish Government complaints procedure relates to matters for which the Scottish

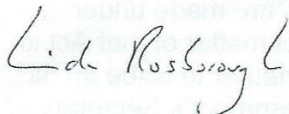
Government has responsibility in delivering a service. As explained this was not the case in this instance.

The Scottish Government is the authority for marine planning and coastal conservation powers. Given the Scottish Government's responsibility for environmental protection in Scotland, Scottish Ministers have made clear they expect a clearly defined role in the licensing process for any Ship To Ship transfers in waters adjacent to Scotland. Mr Wheelhouse already pursued this avenue in October 2014 in his previous role as Minister for Environment and Climate Change, but the request was rejected by the then UK Secretary for State for Transport. In February 2016 the Cabinet Secretary for Rural Affairs, Food and the Environment, restated the Scottish Government's call for such a role.

We have now learnt that the Maritime and Coastguard Agency has asked the Cromarty Firth Port Authority to undertake additional work on its application. We believe the requirement for this additional work provides an opportunity to begin a dialogue about both the Cromarty Firth Port Authority application and the handling of oil transfer licence applications generally. Mr Wheelhouse has therefore now written again to the MCA requesting this dialogue takes place as soon as possible. We await a response. In addition discussions with the MCA at an operational level are taking place to ensure Marine Scotland are more closely involved in the consultation process in future.

The Scottish Government has long argued for the devolution of powers to assess and grant oil transfer licences. Until then we can only press the MCA and UK Government for greater involvement in this process.

I trust you find this response helpful.



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