

Appendix 1

Habitats Regulations Appraisal

The classified Hoy SPA means that the requirements of The Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the “Habitats Regulations”) or, for reserved matters, The Conservation of Habitats and Species Regulations 2017 apply. In addition, the Scottish Government has a policy of protecting proposed SPAs, therefore Scapa Flow pSPA, as if they were classified, and as set out in Scottish Planning Policy. Consequently, Orkney Islands Council is required to consider the effect of the proposed development on the SPA and pSPA before it can be consented (commonly known as a Habitats Regulations Appraisal).

Where the Council reaches the conclusion, on a development proposal unconnected with the nature conservation management of a Natura 2000 site, that a development is likely to have a significant effect on that site, it must undertake an Appropriate Assessment of the implications for the conservation interests for which the area has been designated. The need for Appropriate Assessment extends to plans or projects outwith the boundary of the site in order to determine their implications for the interest protected within the site.

This means that the Council, as competent authority, has a duty to:

- determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not:
- determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then:
- make an Appropriate Assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

The competent authority can only agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. If this is not the case, and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.

It is evident that the proposal is not connected with or necessary to site management for conservation, hence further consideration is required.

Appraisal – 18/057/MAR

Natura Interests – Scapa Flow pSPA and Hoy SPA

The proposal lies within the Scapa Flow proposed Special Protection Area selected for the following qualifying interest(s): Great northern diver (non-breeding), Red-throated diver (breeding), Black-throated diver (non-breeding), Slavonian grebe (non-breeding), Common eider (non-breeding), Long-tailed duck (non-breeding), Common goldeneye (non-breeding), Red-breasted merganser (non-breeding) and European shag (non-breeding). The proposal is also close to the Hoy Special

Protection Area and within known foraging areas for the breeding red-throated diver qualifying interest of the Hoy SPA, which is also classified for the protection of several other breeding bird species. These are Arctic skua, Fulmar, Great black-backed gull, Great skua, Guillemot, Kittiwake, Peregrine, Puffin and Seabird assemblage. In its latest response to the Council, SNH has provided an appraisal of the impact that the proposal is likely to have on the Hoy SPA and Scapa Flow pSPA.

The Conservation Objectives for Hoy SPA are noted as follows:

To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.

To ensure for the qualifying species that the following are maintained in the long term:

- Population of the species as a viable component of the site.
- Distribution of the species within site.
- Distribution and extent of habitats supporting the species.
- Structure, function and supporting processes of habitats supporting the species.
- No significant disturbance of the species.

The Conservation Objectives for Scapa Flow pSPA are noted as follows:

To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, subject to natural change, thus ensuring that the integrity of the site is maintained in the long-term and it continues to make an appropriate contribution to achieving the aims of the Birds Directive for each of the qualifying species.

This contribution will be achieved through delivering the following objectives for each of the site's qualifying features:

- Avoid significant mortality, injury and disturbance of the qualifying features, so that the distribution of the species and ability to use the site are maintained in the long-term.
- To maintain the habitats and food resources of the qualifying features in favourable condition.

Matters in relation to the conservation objectives as noted above considered disturbance through re-configuration/construction phase of the development, risk of entanglement, impacts on supporting habitats of Scapa Flow pSPA and other relative natural heritage considerations. Given the nature and extent of works proposed – the enlargement of the cage sizes on a pre-existing marine fish farm site with no alterations to cage grid, mooring areas or biomass – and in light of information provided by the applicant with respect to Predator Defence and Mitigation Policy and Vessel Management Plan, which can be secured by appropriate planning condition(s), the proposal is not considered to have significant effects on natural heritage interests of national or international importance. These

points were likewise considered within the response from SNH which concluded 'it is unlikely that the proposal will have a significant effect on any qualifying interests of either Natura site either directly or indirectly. An Appropriate Assessment is therefore not required'.

Conclusion

Based on this appraisal it is concluded that the proposal will not significantly affect the integrity of the Hoy SPA or Scapa Flow pSPA, therefore an Appropriate Assessment is not required.