

Marine Works (Environmental Impact Assessment) Regulations 2007

Environmental Impact Assessment Consent Decision

Project Title: Rathlin Island New Ferry Docking Pier

Applicant: Department for Regional Development

Location: Rathlin Island Harbour, Church Bay, Rathlin Island

1. Introduction

This document constitutes an environmental impact assessment (EIA) consent decision under Regulation 22 of the Marine Works (Environmental Impact Assessment) Regulations 2007 (MWR) (as amended) in respect of an application, which has been submitted by Department of Regional Development to DOE Marine Division for a marine licence under the Marine and Coastal Access Act 2009 Part Four.

Causeway Coast and Glens Borough Council determined because the proposed development is one which falls within Sensitive Areas and Category 10 (G) of Schedule 2 of the Planning (EIA) Regulations (NI) 2015, they were obliged under Regulation 10 to make a determination as to whether the planning application should be accompanied by an Environmental Impact Assessment.

The Council was of the opinion that the proposal would be likely to have significant effects on the environment and determined that the planning application should be accompanied by an Environmental Statement. A screening/scoping decision was issued by Causeway Coast and Glens Borough Council to the applicant on 10 September 2015.

The EIA Directive has been transposed into UK Law for marine works (including works requiring a marine licence) by The Marine Works (Environmental Impact Assessment)

Regulations 2011. When working with local authorities, Marine Division will take into consideration the decision of the local authority on whether a project is EIA.

As part of this licence application, Marine Division therefore took into consideration the EIA determination from the Council. Subsequently, the marine element of the project, as described in the application, was not considered in isolation from the local planning authority decision and was included as part of the EIA element of the project.

The application made to Marine Division was then supported by the Environmental Statement and the required information as set out in Regulation 12 of the Marine Works (Environmental Impact Assessment) Regulations 2011.

2. Project Description

Department of Regional Development (DRD) provides a ferry service between Ballycastle and Rathlin Island. Two ferries are used to provide the service, one of which is nearing the end of its operating life. DRD therefore have commissioned a replacement ferry, which will be too large to enter the inner harbour at Rathlin Island.

DRD are therefore proposing to construct a new slip-way for the loading and unloading of vehicles and passengers on the ferry and a new harbour wall to enable the ferry to berth during the day and overnight.

The proposed scheme is approximately 150 m west of the existing slipway facility within Church Bay, alongside the harbour's western breakwater. The harbour improvements will provide a new ferry ramp, berthing pier, hardstanding area, mooring bollards, fendering system, lighting for the facility and access to the new slipway.

The new ferry berth will be constructed using a combination of steel sheet piles and reinforced concrete retaining walls, which will form a vertical berthing quay. The new berthing pier will be approximately 75 m long and will have a reinforced concrete deck and a concrete wave wall along the left hand side of the pier deck. The new ferry ramp will be approximately 34 m long by 10 m wide and will be constructed from a reinforced concrete slab. To facilitate the loading and unloading of passengers and vehicles from the new ferry a bitmac hardstanding area is proposed. There will also be 10 new car parking spaces, a temporary compound area is also proposed for an office and storage of plant and materials during construction.

The proposed area for development is on the western fringe of the existing Rathlin Island Harbour. It is within Rathlin Island Special Area of Conservation (SAC), Special Protection Area (SPA) and Rathlin Island Coast Area of Special Scientific Interest (ASSI), which are of national and international importance. The site also falls within the Antrim Coast and Glens Area of Outstanding Natural Beauty (AONB).

3. The Environmental Statement

The principle potential impacts identified and included within the Environmental Statement were:

- Cultural Heritage
- Ecology and Nature Conservation
- Landscape and Visual Assessment
- Noise and Vibration
- Cumulative impacts

3.1 Environmental Sensitivities

The following were identified by Causeway Coast and Glens Borough Council as potential environmental effects of the project:

- **Noise** – Due to the nature of the proposal, noise will be generated from the construction works, from ferry movements and traffic using the harbour.
- **Dust** – from construction works
- **Traffic generation** – During construction works and vehicles and foot passengers making daily use of the new harbour
- **Archaeology** – The site is located within several buffer zones for archaeological monuments
- **Built Heritage** – Potential impact on St. Thomas Church, located north of the site
- **Visual Impact** – Concrete pier deck, 10 m concrete ferry ramp, rock armour, bitmac holding/waiting area
- **Impact on sensitive areas** - The site is located within Rathlin Island Special Area of Conservation (SAC), Rathlin Island Special Protection Area (SPA), Rathlin Island Coast ASSI and Antrim Coast and Glens Area of Outstanding Natural Beauty (AONB).
- **Landscape Considerations** - The site is zoned as being within Church Bay Local Landscape and Policy Area (LLPA)
- **Impact upon range of species** – degradation of the adjacent aquatic environment as a result of contaminated run-off or directly from works within the designation. Introduction of pollutants may adversely impact species diversity of the SAC features. Development of seal haul out areas resulting in possible noise disturbance or injury to marine mammals.
- **Introduction of invasive species through development**
- **Disturbance to SPA features during construction and operation**
- **Temporary or permanent habitat loss or change** - loss of supporting habitat as a result of proposed works and through small scale changes in sediment structure
- **Direct loss of ASSI feature**
- **Disturbance of the MCZ feature (black guillemot) and SPA features during construction and operation.**
- **Displacement from areas of feeding**
- **Pollution**

- **Siltation**
- **Impact on the active pot fishery around Rathlin due to any disturbance or increased sedimentation in the area**
- **Impact on the public** – There are 3rd part residential receptors located north east of the proposal along Church Bay with the closest one approx. 70 m away all of which may potentially be affected by the aforementioned effects.

The site itself is within Rathlin Island SAC/SPA and Rathlin Island Coast ASSI. A meeting was held with the applicants and DOE Marine Conservation/Marine Licensing on 20 November 2015 with SES present. During this meeting the HRA Screening report and scope of updated HRA to be submitted for planning permission and the marine licence was discussed. DoE and SES requested detailed construction methodology (as far as possible) to be included in the HRA and a combined HRA to include dredging and disposal HRAs. The applicants were informed of the consultation for Rathlin to become a Marine Conservation Zone and that one of the key factors for this designation is the population of black guillemots. The applicants were directed to the consultation documents for the MCZ, which show the location of the habitat features and where black guillemots nest and the location of butterflyfish populations.

DOE Marine Conservation confirmed that the qualifying features of sandbanks and reefs are not located in the area proposed for development. The sandbanks located at Mill Bay. In the harbour area the sea bed is mud and sand. SES raised the issue of the SPA bird qualifying features and that HRA didn't mention all the features, which needed to be updated.

DOE Marine Division raised the issue of disturbance to seals and porpoises from piling Works and stated that construction works would require a licence under the Wildlife Order. The HRA should include mitigation measures for piling disturbance and make reference to JNCC guidance on piling.

DOE Marine Division requested that timing of works should aim to avoid the breeding season for Common and Grey seals and a detailed construction methodology with mitigation measures to include PPGs, response plan and notifications.

The issue of seals in the harbour area and at the area of proposed site was raised during the meeting and the fact that the timing of works coincides with breeding season. DOE Marine Division requested that no significant piling occurs in May/June, piling to use soft start up measures and a marine mammal observer to ensure no seals are near works. DOE Marine Division also suggested that acoustic deterrent measures be used at the mouth of the harbour to prevent seals entering the harbour before works start. DOE requested that nesting boxes for black guillemots be considered in the design and included in the harbour. Although Black guillemots not likely to be in the breakwater, this element should be considered.

SES raised the issue of non native invasive species, to include measures to prevent slipper limpet and Crepidula and biosecurity measure are to be included in ES and HRA.

3.2 Appropriate Assessment

The proposed works did not require an appropriate assessment under Regulation 48 of the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 (as amended).

4. Consultation

4.1 Public Consultation

In accordance with Regulation 16 (1) (b) of the MRW, DOE Marine Division instructed DRD to place a public notice in two newspapers for two successive weeks. The public notice contained details of:

- The applicant's name and address
- That an application had been made under the MWR and Part 4 of The Marine and Coastal Access Act 2009
- A statement of the nature and location of the project
- The address details of where the application and ES could be inspected during office hours
- Notice that the parties could make such requests and representations to DOE Marine Division

Marine Division did not receive any public representations through the public advertisement, however, Planning did receive a public objection and this has been addressed through the Planning EIA Consent Decision.

4.2 Consultees

As part of the consideration of the application and ES, DOE Marine Division conducted a consultation with advisory and regulatory bodies for comment on the validity of the ES Document and the conclusions of environmental impact drawn. The consultation opened on 8 January 2016 and closed on 19 February 2016. Several consultees did not have enough capacity in their inbox for the documents, and were therefore allowed an additional week of consultation in order to allow time for the documents to arrive via the post.

4.2.1 Consultee List

The application, ES, HRA and supporting documentation were sent to the following:

Consultee	Response Return Date
Maritime and Coastguard Agency	22 January 2016

Commissioner of Irish Lights	8 January 2016
The Crown Estate	1 March 2016
DOE Marine Conservation and Reporting Team – MARINE CONSERVATION	24 February 2016
DOE Marine Conservation and Reporting Team – MARINE ARCHAEOLOGY	11 February 2016
CDP NIEA	25 January 2016
RSPB	No Response
DARD Fisheries	18 January 2016
DCAL	12 January 2016
AFBI	Nil Response
MAT Planning	18 January 2016
WMU Planning	27 January 2016
NI Water	1 February 2016
Rivers Agency	2 February 2016
DOE Bathing and Shellfish Waters	8 January 2016
RYANI	No response
UKHO	11 January 2016
University of Ulster (Andrew Cooper)	No response
Rathlin Island Community Group	No Response

4.2.2 Consultation Responses

Commissioner of Irish Lights – The Harbour Master should re-assess the Aids to Navigation requirements during and on completion of the works.

DOE Marine Division Bathing and Shellfish Waters Team – No comment.

UK Hydrographic Office – UKHO have no comments to make other than that you include in the licence the requirement to notify the UKHO when the works are started and completed, in order that Admiralty Charts and publications can be updated for the developments, in the interests of safety and navigation.

Department of Culture, Arts and Leisure – Inland Fisheries - The nature and location of the development is noted. Given that the works are within the marine environment DCAL is satisfied that there should be no direct impact, now or within the lifetime of this project, to salmonid and inland fisheries interests, provided that all conditions are applied and enforced. The applicant should be made aware that it is an offence under section 47 of the Fisheries Act (Northern Ireland) 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.

Marine Monitoring and Assessment Team - During the construction phase mitigation measures should ensure that disturbance of silt into the water column is minimised and where possible mostly kept within the breakwaters. There are sensitive marine habitats of

maerl and *Zostera marina* within approximately 1km of the breakwaters (to the south and to the west). These are part of the Rathlin SAC feature 'Sandbanks which are slightly covered by seawater all the time' and their condition has the potential to be impacted by excessive siltation.

DARD Fisheries – DARD fisheries have no issues or concerns to raise from an aquaculture aspect with this project. However, we would like to inform the applicant that there is an active pot fisheries around Rathlin Island and any disturbance or increased sedimentation in the area of pot fishery may have an adverse impact. We would also like to remind the applicant that it is an offence under Section 47 of The Fisheries Act (NI) 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.

Maritime and Coastguard Agency – MCA can confirm the agency has no objections 'from a navigational point of view' to this development for the new ferry quay. Please ensure the developers keep all stakeholders advised of progress with this project and that appropriate Local Notices to Mariners are issued during the development and building works. The Commissioner of Irish Lights should be consulted in order that they can advise on the navigation lighting requirements for the new jetty and quay. The UKHO should also be consulted in order that temporary chart corrections for the affected area can be promulgated via the weekly Notices to Mariners and a permanent correction issued on completion of the works.

Northern Ireland Environment Agency Conservation, Designation and Protection - The non-technical summary indicates that dredged material would be disposed at Ballycastle. The main text of the ES provided indicates that dredged material would be used as infill for the proposed sheet piled area and any unsuitable material would be disposed at Ballycastle. The information provided indicates that the maximum depth of dredging will be 3.5 metres and also that it will be no more than 1 metre. The HRA supplied indicates a maximum depth of 3.5 metres. Clarification on this should be sought, however the worst case scenario should be utilised. The HRA should cover the entire project and include all necessary information.

The ES indicates that the final construction methodology has not been provided. The HRA requires all information to be provided upfront. NED previously advised that the CEMP be submitted for the purpose of enabling the HRA to be completed by the planning authority.

Northern Ireland Environment Agency Water Management Unit Pollution Prevention - NIEA WMU provided two consultation responses, which were subsequently provided to Marine Licensing.

The following response is the first response issued to Planning:

NIEA WMU has considered impacts of the proposal on the surface water environment and on the basis of the information provided is content with the proposal subject to conditions

Condition:

A detailed and comprehensive Construction Environmental Management Plan (CEMP) must be submitted to the Planning Authority, for consultation and agreement with NIEA Water Management Unit, at least eight weeks prior to the commencement of construction.

Reason: To ensure effective avoidance and mitigation measures have been planned for the protection of the water environment.

Explanatory Note

Due to the nature of the proposed works and the close proximity of the site to the water environment, care will need to be taken to ensure that polluting discharges do not occur, particularly during the works phase.

Where appropriate, Water Management Unit would encourage the use of SuDS (Sustainable Drainage System) techniques, particularly during the construction phase, to deal with site drainage.

If it is not possible to adequately manage construction phase site drainage using SuDS features, consent to discharge under the terms of the Water (Northern Ireland) Order 1999 will then be required.

Any proposed discharges not directly related to the construction of the development, such as from septic tanks or wash facilities, will also require separate discharge consent applications. The applicant should refer to in DOE Standing Advice Note No. 11 – Discharges to the Water Environment (April 2015), please see below.

In accordance with the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (as amended) it is a mandatory requirement that upon the abstraction and/or diversion and/or impoundment of water from the natural river channel/lake, coastal or groundwater sources, an abstraction/impoundment license should be obtained unless the operations specified are Permitted Controlled Activities.

Informatives

The applicant will be required to adhere to the advice detailed in:

DOE Standing Advice Note No.4 – Pollution Prevention Guidance (April 2015)

http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_4_pollution_prevention_guidance.pdf

DOE Standing Advice Note No.5 – Sustainable Drainage Systems (April 2015)

[http://www.planningni.gov.uk/index/advice/northern ireland environment agency guidance/standing advice 5 sustainable drainage systems.pdf](http://www.planningni.gov.uk/index/advice/northern%20ireland%20environment%20agency%20guidance/standing%20advice%205%20sustainable%20drainage%20systems.pdf)

DOE Standing Advice Note No. 11 – Discharges to the Water Environment (April 2015)

[http://www.planningni.gov.uk/index/advice/northern ireland environment agency guidance/standing advice 11 discharges to the water environment.pdf](http://www.planningni.gov.uk/index/advice/northern%20ireland%20environment%20agency%20guidance/standing%20advice%2011%20discharges%20to%20the%20water%20environment.pdf)

DOE Standing Advice Note No. 18 – Abstraction and Impoundment (May 2015)

[http://www.planningni.gov.uk/index/advice/northern ireland environment agency guidance/standing advice 18 abstractions and impoundments issue 01 may 2015-2.pdf](http://www.planningni.gov.uk/index/advice/northern%20ireland%20environment%20agency%20guidance/standing%20advice%2018%20abstractions%20and%20impoundments%20issue%2001%20may%202015-2.pdf)

Standing Advice Notes are available on the NI Planning Portal under Advice / NIEA Guidance / Standing Advice. Alternately the web address can be copied and pasted to a web browser.

Effective mitigation measures must be in place to protect the water environment and surrounding water bodies from any discharge into them that may damage ecological status and to ensure that the Water Framework Directive (WFD) objectives for the water body are not compromised nor the WFD objectives in other downstream water bodies in the same and other catchments.

The applicant should be informed that it is an offence under the Water (Northern Ireland) Order 1999 to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and / or three months imprisonment.

The applicant should ensure that measures are in place to prevent pollution of surface or groundwater as a result of the activities on site, both during construction and thereafter.

The second following response was then issued to Planning based on the initial consultation:

Water & Drainage

Section Reference: WMU/PC/24420-2

Considerations

Water Management Unit has considered the impacts of the proposal on the surface water environment and on the basis of the information provided is content with the proposal subject to conditions.

Conditions

A detailed Construction Method Statement (CMS) must be submitted to the Planning Authority, for consultation and agreement with NIEA Water Management Unit, at least eight weeks prior to the commencement of construction. The CMS should include all necessary pollution prevention measures to protect the water environment during the development of this proposal.

Explanatory Note

Water Management Unit has reviewed the Construction Environmental Management Plan (CEMP) and while we welcome the inclusion of the relevant guidance detailed in our previous response, the following points should be addressed:

- Section 4.2.8 of the CEMP needs modified; any pollution of a waterway is significant and must be reported to the NIEA Water Pollution Hotline as soon as is reasonably possible. There should be some direction in the CEMP such as “in the event of a water pollution incident contact the NIEA water pollution hotline on 0800 80 70 60 within 30 minutes unless it is not safe to do so”.
- Water Management Unit notes the intended use of a clay bund and would like to point out that clay itself is a pollutant. There will need to be more detail about how this will be constructed and deconstructed in the Construction Method Statement that is to be agreed before construction begins.

Finally, we note that the applicant has identified the need for consent to discharge under the terms of the Water (Northern Ireland) Order 1999. Water Management Unit would just like to highlight that applications for discharge consent take a minimum of four months to determine.

Northern Ireland Water - Northern Ireland Water have examined the proposals and can confirm they will have no significant impact on any of our existing infrastructure assets. NI Water were consulted during the pre-application stage of the planning process and issued the following comments to the Planners:

The proposed development will have no major impact on existing NI Water infrastructure. Please note the following:

- *An existing public combined sewer crosses this site. The applicant will be required to contact NIW at an early design stage to discuss the location of the proposed development in order that it does not conflict with existing NIW infrastructure.*

Rivers Agency - Rivers Agency have no comment to make but would include the following information:

This proposal does not affect any Rivers Agency assets (i.e. Designated watercourses, culverts or flood defences).

General Informative for all Marine Construction Licence Applications

Within the terms of the Drainage (Northern Ireland) Order 1973, Marine Construction Licence applicants are advised of the following legal requirements for ALL sites as follows:

1. If during the course of developing a site a watercourse is uncovered which was not previously evident, the appropriate Rivers Agency Office should be advised immediately in order that arrangements may be made for the investigation and direction in respect of any possible action necessary to deal with the watercourse. Piped storm drains, culverts, open channels etc. may be considered to be watercourses.
2. Any proposals either temporary or permanent, in connection with the development, which involve interference with any watercourse at the site such as culverting, bridging, diversion, building adjacent or discharge of storm water etc require the written consent (known as "Schedule 6 Consent") from Rivers Agency.
3. Failure to obtain Schedule 6 Consent is an offence under the provisions of the above Order, which may lead to prosecution or other statutory action as provided for.

In this instance the appropriate Rivers Agency office to contact in respect of Schedule 6 applications and any other general enquiries is:

Coleraine Area Office,

37 Castleroe Road, Castleroe,

COLERAINE, BT51 3RL

Tel: 028 7034 2357

Marine Division – Marine Archaeology - This application site is located in close proximity to an archaeologically sensitive area and adjacent to several sites and monuments of archaeological interest. Historic Environment Division (HED) have already considered the terrestrial implications of this development (see Planning Service Ref: LA01/2015/0342/F; NIEA: HMU Ref: SM11/1 ANT 1:23) for the archaeological and built heritage. In doing so HED requested an 'Archaeological Impact Assessment' and following that an 'Archaeological Programme of Works (PoW)'; both of which have been completed. Maritime concerns were scoped in latterly.

In the amended PoW it is recommended that:

.. works within the sub-tidal zone (i.e. areas below Low Water Mark (LWM)) ...must be undertaken under strict archaeological supervision as part of monitoring of ground / seabed disturbance ...to ensure the efficient reporting of archaeological material that might inadvertently be found during... [and] ...mitigate the potential impact on any unknown and potentially significant archaeological remains discovered during any sub-tidal excavation works.

Therefore, I am suggesting the following project specific conditions and informatives for this development:

DOE MARINE CONSERVATION AND REPORTING (HISTORIC ENVIRONMENT)

CONDITIONS:

- No dredging works shall take place until arrangements have been made, and agreed with the Department, for archaeological surveillance of dredging, and for the recording and reporting of any archaeological remains which may be identified. [NB. these arrangements may be included in a wider programme of archaeological works to be agreed with Historic Environment Division].

Reason: To ensure that any archaeological remains which may exist within the dredge application site are properly identified, and protected or appropriately recorded.

- Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department to observe the dredge operations and to monitor the implementation of archaeological requirements.

Reason: to monitor programmed dredging works in order to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition, or agreement is satisfactorily completed.

ADDITIONAL NOTES AND INFORMATIVES:

Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995

- The licensee(s) attention is drawn to Article 42 of the **Historic Monuments and Archaeological Objects (NI) Order 1995** that requires finders of archaeological objects to report within 14 days to a relevant authority. In the event of a discovery of an archaeological object and/or remains during works the Department would ask that you: (1) record the position and details of the site; (2) do not disturb the site further and (3) report your discovery to and seek further advice from this Office immediately.

Reason: To ensure recovered archaeological material is recorded with the appropriate authority

Merchant Shipping Act 1995

- The License Holder must report any recovered wreck material to the Receiver of Wreck (Maritime and Coastguard Agency) in accordance with the **Merchant Shipping Act 1995**.

Reason: To ensure recovered wreck material is recorded with the appropriate authority

The Crown Estate – The Crown Estate has no objection to the new ferry terminal proposal

Marine Division – Marine Conservation and Reporting - An initial response was provided by Marine Conservation and Reporting on 1 February 2016 to include the following:

I have assessed the application and the associated HRA for this project. I have already addressed a lot of the issues through the planning consultation on this application (LA01/2015/0342). However, there currently appears to be more than one HRA in circulation for this project with inconsistencies between what is being submitted for planning permission and the marine licence. Ideally both HRAs should be consistent for this project with the same mitigation detailed in both. The ES submitted to Marine Licensing also does not appear to have been updated to reflect revision 2 of the HRA.

HRA Comments

Section 2.2 As previously discussed through the planning consultation and with yourself, the Maidens SCI should be included in this section and also in the HRA table. Within the HRA table the Maidens SCI could be screened reflecting the mitigation detailed in section 3.3. Although the Maidens SCI is approx. 44km away, this is within the travelling range for grey seals as current research as indicated.

Section 3.3.2 There appears to be some confusion around the Marine Wildlife Licence which will be required for this project. As discussed at the meeting on 30th November 2015 between Amey and Marine Environment Division, piling works should try to avoid the breeding season for seals. A Wildlife Licence will not be issued for seals as Article 11 of the Wildlife (Northern Ireland) Order 1985 (as amended) provides that a person shall not be guilty of an offence under Article 10 (killing or injuring a species listed in Schedule 5 (as amended)) if the act was incidental to a lawful operation (i.e. activity permitted by a Marine Licence or Planning Permission) and

could not reasonably be avoided. Therefore for national species, such as seals, if the commission of the offence is incidental to a lawful activity, it is more appropriate to manage the activity, and therefore reduce the likelihood of an offence being committed, by requiring mitigation through conditions imposed on the Marine Licence. If all the mitigation outlined by the applicant is adhered to, then there should also be no disturbance to seals within vicinity to the works – as none should be present within 500m of the works.

However, as discussed with the applicant a Wildlife Licence will be issued during the construction period for European Protected Species (EPS) and there will be associated conditions as there is no equivalent “incidental act” exception in the Habitats Regulations for EPS. Also under the Habitats Regulations the activities for which a wildlife licence may be granted are broader than under the Wildlife Order. For example, the Habitats Regulations for EPS allows a licence to be granted for reasons of overriding public interest, this is not applicable for national species such as seals. Under the Wildlife Order we do not have power to grant a licence for disturbance, therefore mitigation is required. Mitigation outlined in the HRA for seals will be required at all times and this will be a condition of the Marine Licence, reducing the likelihood of harm to national marine protected species.

Section 3.3.4 In relation to the MMO, while it does not state it in the HRA, this should be a JNCC approved MMO who is appropriately trained and fully aware of the mitigation procedures within the piling protocol. The MMO must receive a copy of the mitigation measures requested by the Department.

Section 3.3.5 The methodology regarding the use of the ADDs varies between Revision 1 and 2 of the HRA. Please advise why this has changed in the 2nd revision.

Section 3.3.6 As discussed at the meeting on 30th November 2015 piling works should try to avoid the breeding season for seals. As stated above the Wildlife Licence will only cover EPS species. However, the conditions on the Marine Licence will be designed to reduce the risk of an offence to a negligible level.

Section 3.3.7 This should be a condition on the Marine Licence.

In the initial HRA section 3.3.9 states that large boulders used within the development area will be moved to the east of the proposed development at a similar tidal depth and retained within the harbour area to maintain the extent of haul out habitat. This appears to have been omitted from the mitigation section in Revision 2 of the HRA. Please advise why.

Content with the amendments that have been made to section 4.3 – In-combination effects.

In the HRA assessment table, as previously mentioned the Maidens should be included, along with the associated mitigation. Likewise with the Skerries and Causeway SCI the assessment should detail all mitigation which will be used.

Environment Statement comments:

Section 4.2.3 makes reference to how ducted propellers should not be used. This is no longer applicable and Statutory Nature Conservation Bodies have circulated new evidence that ducted propellers pose no greater risk than non-ducted propellers. Advice released in February 2015 replaces all previous guidance.

Section 8.8 on mitigation varies from that in the HRA. Both these should be consistent. The ES appears to reflect revision 1 of the HRA, not the 2nd revision. For example section 8.8.6 of the ES differs to the HRA and

section 8.8.8 is no longer include in revision 2 of the HRA. Please note the points raised above are also applicable for the ES regarding the Wildlife licence for seals (e.g. section 8.8.4).

Please attach the informatives below, to any licence granted.

Marine National Protected Species:

The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended), under which it is an offence to intentionally or recklessly kill, injury or take any wild animal included in Schedule 5 to the Order. This includes the common seal (*Phoca vitulina*), grey seal (*Halichoerus grypus*), basking shark (*Cetorhinus maximum*), angel shark (*Squatina squatina*), common skate (*Dipturus batis*) short snouted seahorse (*Hippocampus hippocampus*), spiny seahorse (*Hippocampus guttulatus*), spiny lobster (*Palinurus elaphus*) and fan mussel (*Atrina fragilis*).

Article 11 of the Wildlife (Northern Ireland) Order 1985 (as amended) provides that a person shall not be guilty of an offence under Article 10 (killing or injuring a species listed in Schedule 5 (as amended)) if the act was incidental to a lawful operation (i.e. activity permitted by a Marine Licence or Planning Permission) and could not reasonably be avoided. A separate marine Wildlife Licence is therefore not required for national marine protected species if a Marine Licence/Planning Permission has been granted, since adherence to the conditions of the Marine Licence should reduce the likelihood of harm to national marine protected species.

Under Article 10 it is an offence to intentionally or recklessly disturb; common seals, grey seals or basking sharks. It is also an offence under Article 10 to intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which these animals (Schedule 5¹) use for shelter or protection; damage or destroy anything which conceals or protects any such structure; or disturb any such animal while it is occupying a structure or place which it uses for shelter or protection.

Under Article 13 it is an offence to sell or transport any Schedule 7 animal dead or alive at any time².

Any person who knowingly causes or permits an act which is made unlawful under Article 10 or Article 13 shall also be guilty of an offence.

If there is evidence of Schedule 5 animals listed above at the site, all works must cease immediately and further advice must be sought from DoE Marine Environment Division Klondyke Building, Cromac Avenue, Belfast BT7 2JA.

Under the Wildlife (Northern Ireland) Order 1985 (as amended) a licence may be required for any operations which might impact on protected species.

¹ Common skate and angel sharks in respect to Article 10 (1) only and within 6 nautical miles of coastal water only.

² Schedule 7 species includes all Schedule 5 species listed in Appendix A, with the exception of the common skate and angel shark. Sea urchin is protected under Schedule 7 only.

Marine European Protected Species:

The applicant's attention is drawn to regulation 34 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), which states that it is an offence to deliberately capture, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphins, porpoises and whales and the marine turtle species.

(1) It is also an offence to;

(a) deliberately disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;

(b) deliberately to disturb such an animal in such a way as to be likely to;

(i) affect the local distribution or abundance of the species to which it belongs;

(ii) impair its ability to survive, breed or reproduce, or rear or care for its young; or

(iii) impair its ability to hibernate or migrate;

(c) deliberately take or destroy the eggs of such an animal;

(d) deliberately obstruct access to a breeding site or resting place of such an animal; or

(e) damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence for any person;

(a) to have in his possession or control,

(b) to transport,

(c) to sell or exchange, or

(d) to offer for sale or exchange,

any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

If there is evidence of Schedule 2 animals listed above at the site, all works must cease immediately and further advice must be sought from DoE Marine Environment Division Klondyke Building, Cromac Avenue, Belfast, BT7 2JA.

Under this legislation a licence may be required for any operations which might impact on European Protected Species.

¹ Following two European Court of Justice cases (C-103/00 and C-221/04) “deliberate actions are to be understood as actions by a person who knows, in the light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action”

http://jncc.defra.gov.uk/PDF/consultation_epsGuidanceDisturbance_all.pdf

The original HRA was initially provided as part of the application and Marine Conservation and Reporting team were asked by Marine Licensing to review the initial HRA before it was sent to consultation with the licence application, hence the second HRA. The original HRA, however, was also sent to Planning and it was issued without any gate checks.

The original HRA, however, was also sent to Planning and it was issued without any gate checks.

Subsequently, on 1 February 2016 the applicant was asked to update the second HRA again and the ES based on MCR’s comments because they had not done this accurately in the 2nd revision. AMEY provided responses to all of MCR’s comments and answered the points in relation to the HRA and the ES on 5 February, however, I asked that the HRA and ES are updated to be agreed with MCR.

MCR accepted the updated HRA Revision 3 and Environmental Statement Revision 2 on 23 February 2016.

5. Conditions

- **Execution of construction works**

1. The licensee(s) shall inform the licensing authority of the finishing date of the work within **1 week** of completion.
2. The licensee(s) shall not deposit any material other than that detailed in the Marine Licence application form received by the licensing authority, dated 21 December 2015.
3. The licensee(s) shall contact the licensing authority if it is proposed to vary the materials or methods to be used from those described in the documentation supplied in connection with the Marine Licence application.
4. The licensee(s) shall ensure that a copy of this licence is given to each contractor appointed to carry out part or all of the works. The extent of the works for which the licence has been given and the conditions that are attached to the licence should be made clear to the contractors.
5. The licensee must provide the licensing authority with the names and operators of the vessels to be employed to undertake or support the deposit, relocation or removal operations before any works take place.
6. The licensee(s) must provide a final construction method statement including an environmental management plan to the licensing authority before any works begin below the Mean High Water Spring Tide. In granting approval for the construction method statement and the environmental management plan, the licensing authority may consult any such other advisors, stakeholders or organizations as may be required.
7. The licensee(s) shall confirm in writing with the licensing authority, if material dredged from the seabed is to be used in this project and how it shall be used.
8. The licensee(s) shall, within **eight weeks** after the completion of the licensed works, make a written report to the licensing authority stating the quantity and description of all articles and substances deposited under the authority of this licence.
9. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:
 - a. The premises of the Licensee(s)
 - b. The premises of the operating facility
 - c. The site of the works (including on board vessels)

▪ **Navigational Safety**

10. The licensee(s) must notify The Source Data Receipt team, UK Hydrographic Office, Taunton. Somerset, TA1 2DN (Email: sdrr@ukho.gov.uk; Tel: 01823 337900) at least 4 weeks before commencement of the works, to allow for any necessary amendments to nautical charts. The UK Hydrographic Office must also be notified upon completion of the works. **This office must be copied into all notifications.**
11. The licensee(s) shall ensure that details of the works are promulgated to stakeholders through Notice(s) to Mariners and/or radio navigational warnings and publication in appropriate bulletins. This should take place prior to the commencement of operations, as stated within the Notice(s) to Mariners guidance notes, which is usually ten days. The notices should state the nature and timescale of any works carried out in the marine environment relating to the operations. Updates should then be issued as required, to ensure that stakeholders are kept up to date of timings and locations etc. **This office must be copied into all notifications.**

12. The licensee(s) shall ensure that any lights and/or marks to be displayed, in the carrying out of any works in accordance with this licence, must be in line with any requirements of the Commissioner of Irish Lights. The displaying of unauthorized marks or lights is prohibited.
13. The licensee(s) should ensure Harbour Master re-assesses the aids to navigation requirements during and on completion of the works
14. The licensee(s) must ensure any establishment, disestablishment or alteration to an aid to navigation must be brought to the attention of the Local Lighthouse Authority who in turn must seek statutory sanction for the changes from Commissioner of Irish Lights

- **Environmental Management**

15. A noise risk impact assessment must be produced and submitted to the licensing authority for approval before impact piling/significant noise disturbance activity can begin, to prevent disturbance to sensitive receptors.
16. The licensee(s) must notify the licensing authority **one week** in advance of commencement of piling or any other significant noise disturbance activity.
17. The licensee(s) shall aim to avoid carrying out any piling or significant noise disturbance works June/July or September to November to avoid disturbance to the main seal pupping season, as described in Section 3.3 of the project Habitat Regulation Assessment. If there is significant noise disturbance activities to be completed, the licensee(s) shall ensure the follow the conditions for the appointment and operation of a MMO and also ADDs.
18. The licensee(s) shall ensure that at least two Acoustic Deterrent Devices (ADDs) are installed in the pier in Church Bay before works are due to begin. These must be switched on prior to any works beginning. These must only be switched off once a soft start begins.
19. The licensee(s) shall appoint an approved Marine Mammal Observer (MMO) to ensure there is no disturbance or injury/harm to marine mammals wherever they are present.
20. The MMO should carry out a pre-works survey before any piling or significant noise disturbance works begin. If marine mammals are detected within 500 m of the work (the mitigation zone), which is measured from the location of the noise, the MMO will issue a delay in the commencement of piling or other significant noise disturbance activity, until they are satisfied that the animals have left the mitigation zone.
21. If impact piling or other significant noise disturbance activity is required during construction the licensee(s) shall ensure that a soft start is used at the beginning of the noisy activity e.g. piling. This requires a gradual ramping up of the activity until full power is achieved. The soft start duration should be a period not less than 20 minutes. The soft start protocol may also vary depending on the activity and this should be set out in the Construction Environmental Management Plan. Any variation in the 20 minutes soft start duration period must be agreed with the regulator beforehand.
22. The MMO must also ensure that if any marine mammals enter the mitigation zone while works are taking place that all works cease until marine mammals have left the mitigation zone. It is recognised that this may not always be possible, for example, in the case of marine mammals entering the mitigation zone during piling at full power. However, this should be noted and when possible, operations stopped. If a break of more than 10 minutes occurs, then a pre-works search should again be conducted and a soft start utilised again. Further information can be found here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/50006/jncc-pprotocol.pdf

23. If impact piling or other significant noise disturbance activity is required during construction the licensee(s) shall maintain a record of the beginning and end times and duration, e.g. hammer energy blow or explosive charges. Records must be submitted to the licensing authority within **eight weeks** of completion of the licensed works.
24. Any large boulders to be removed as part of the works should be re-located eastwards of the area of development and re-located at a similar tidal depth within the harbour area.
25. Biosecurity measures should be implemented by the licensee as part of the work procedures to prevent the spread of non-native and invasive species. Machinery should be cleaned, checked and disinfected before transport to Rathlin and again before leaving.
26. The licensee(s) shall ensure that a suitably qualified ornithologist is present on site during the construction works. This ornithologist should carry out a nesting bird survey before works begin and should have the ability to stop works if disturbance to birds occurs.
27. The licensee(s) must ensure that in the event works are partially halted due to disturbance to breeding/nesting birds, the licensing authority are notified in writing within 24 hours, informing them of the reasons why works have been suspended and the severity of the event. The ornithologist should have the authority to re-start the works, and the reason for recommencing works must be provided to the licensing authority (in writing) within 24 hours of the decision.
28. In the event that works are to be partially halted for more than 24 hours, then work may not recommence until the licensing authority and NIEA agree that recommencement of works will not impact upon the breeding/nesting birds. The licensing authority may also consult with any such other advisors as may be required in this decision.
29. During the construction phase, mitigation measures should ensure that disturbance of silt into the water column is minimised and where possible mostly kept within the breakwaters. There are sensitive marine habitats of maerl and *Zostera marina* approximately 1 km to the south and west of the breakwaters. These are part of the Rathlin SAC feature 'Sandbanks which are slightly covered by seawater all the time' and their condition has the potential to be impacted by excessive siltation.
30. No works shall be undertaken until arrangements have been made, and agreed with the licensing authority, for archaeological surveillance and for the reporting and recording of archaeological remains, which may be identified. These arrangements may be included in a wider programme of archaeological works to be agreed with Historic Environment Division.
31. The licensee(s) attention is drawn to Article 42 of the **Historic Monuments and Archaeological Objects (NI) Order 1995**, which requires finders of archaeological objects, to report the find within 14 days, to a relevant authority. In the event of a discovery of an archaeological object and/or remains during works you should:
 1. Record the position and details of the site;
 2. Not disturb the site further and
 3. Report your discovery to and seek further advice from the licensing authority immediately.
32. The licensee(s) must report any recovered wreck material to the Receiver of Wreck (Maritime and Coastguard Agency) in accordance with the **Merchant Shipping Act 1995**.
33. The licensee(s) should ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during construction and thereafter. The licensee(s) should adhere to the following:
 - Works in, near or over watercourses, PPG5 and
 - Prevent Pollution, & Construction and Demolition sites: PPG6: Prevent Pollution.

6. Regulatory Evaluation

6.1 Conclusions

In considering the application, in particular the Environmental Statement and the Habitats Regulations Assessment, and the relevant provisions under the Marine Coastal and Access Act 2009, a full and detailed assessment has been made of the potential direct and indirect effects of the proposal on Cultural Heritage, Ecology and Nature Conservation, Landscape and Visual Assessment, Noise and Vibration and the interaction between two or any more of these factors.

Marine Division, as the licensing authority, are satisfied with the ES and subject to inclusion of the conditions referred to above in the marine licence, are of the opinion that the marine elements of the project will not have a significant adverse effect on the environment.

6.2 Recommendations

Marine Division are satisfied that the environmental issues in relation to the Rathlin Ferry Docking Pier have been addressed by the documentation provided to the licensing authority, subject to the conditions referred to above being included in any marine licence awarded by Marine Division.

A favourable EIA consent decision should be given in respect of the project, subject to the aforementioned conditions included on any licence awarded.

Reviewed by:	Cara Lavery
Date:	8 th April 2016
Approved by:	<i>[Signature]</i>
Date:	11/4/2016
The Licensing Authority:	DOE

