

THE HIGHLAND COUNCIL

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18 DECEMBER 2014

Agenda Item	13
Report No	HC/38/14

THE PORT OF NIGG HARBOUR REVISION ORDER 201[X]

Report by Director of Development and Infrastructure

SUMMARY

Global Energy Nigg Ltd has applied to the Scottish Government for a Harbour Revision Order in respect of the Port of Nigg. This would create a second statutory harbour authority within the Cromarty Firth. As a statutory consultee Highland Council has the opportunity to submit representations on the Harbour Revision Order.

Council is invited to:

1. consider the terms, potential implications of and issues linked to the proposed Port of Nigg;
2. agree to submit an objection to The Port of Nigg Harbour Revision Order 201[X]; and
3. facilitate discussions with the Port of Cromarty Firth and Global Energy Nigg Ltd with a view to agreeing joint objectives for securing ongoing sustainable development and enhanced opportunities within the Cromarty Firth.

1. Introduction

- 1.1 Global Energy Nigg Ltd applied for The Port of Nigg Harbour Revision Order 201[X] and issued supporting papers to statutory consultees on 13 November 2014. Supporting documents are available within the Members Lounge. It confirmed the Order would revise the existing Cromarty Firth Port Authority Order of Confirmation Act 1973 and create a second, privately owned, statutory harbour within the Cromarty Firth. As a statutory consultee Highland Council has received the relevant paperwork for consideration and response. Consultation lasts for a period of 42 days from the issue of the draft Order. Views on the draft Revision Order are therefore sought by 25 December 2014.
- 1.2 Cromarty Firth Port Authority (CFPA) is the existing statutory harbour authority (Port of Cromarty Firth) constituted as a Trust Port and regulated by the Scottish Government. It is an independent statutory body constituted under the 1973 Act of Parliament (1.1 above). CFPA and the local community have raised a number of concerns regarding the potential impact of a second statutory harbour authority within the Cromarty Firth. Community Councils in the area have also raised concerns.

2 The Port of Nigg Harbour Revision Order 201[X]

- 2.1 The supporting statement prepared by Global Energy Nigg Ltd is attached at appendix 1 for information. This sets out the background and context to the Order application, the history of activity at Nigg and provides a brief overview of the provisions of the Order.

- 2.2 Schedule 2 of the Harbours Act 1964 sets out the reasons why a Harbour Revision Order may be made. The relevant part of Schedule 2 can be found within the applicant's supporting statement (foot of page 8).
- 2.3 Section 14 (2)(b) of the 1964 Act provides that a Harbour Revision Order shall not be granted "*unless [the Scottish Ministers are] satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships*". This is the test that Council will wish to consider in supporting or objecting to the application for the Port of Nigg.
- 2.2 If the Order was confirmed, the operators of the Port of Nigg would have all the general powers and duties of a statutory harbour authority (to manage the port) and would have specific powers including to dredge, create moorings, make byelaws, appropriate for specific purpose parts of the port, lease, license activities, direct and control vessel movements and board vessels within the boundaries of the Port. The Order would also create an offence of not complying with Port directions and would create Permitted Development Rights (via the Town and Country Planning (Scotland) Act 1997) within the Port limits. Port operators would also be entitled to raise charges for services provided. These are powers already available to and exercised by the Port of Cromarty Firth.
- 2.3 A map indicating the position on the proposed Port of Nigg in relation to the existing Port of Cromarty Firth is attached at appendix 2. A map indicating the position of the proposed Port of Nigg limits relative to the main shipping channel used by vessels entering the Cromarty Firth is attached at appendix 3.

3. Cromarty Firth Port Authority (CFPA): Port of Cromarty Firth

- 3.1 Port of Cromarty Firth is an existing Trust Port set up 40 years ago by Act of Parliament to ensure that the area within which it operates was able to take advantage of opportunities arising from the North Sea oil industry. Board members are selected for their expertise and knowledge and their appointment is carried out in accordance with the Modern Trust Ports of Scotland, Guide for Good Governance.
- 3.2 CFPA's annual report 2013 indicates that the Port employs 22 full time staff. During 2014 turnover increased to £8.1M (up 28% on 2012) with pre-tax surpluses of £3.1m (up 37% on 2012). The main segments for growth were oil rig repair and maintenance, oil tanker activities, cruise liner services and the ports property portfolio.
- 3.3 As the existing statutory harbour authority within the Cromarty Firth, CFPA has raised a number of concerns about the creation of the Port of Nigg, including that it will impact adversely on the anticipated growth in inspection, repair and maintenance activities at Invergordon. CFPA is also concerned that the new Port of Nigg could adversely impact on the cruise liner business that has been built up (70,000 visitors annually), impose additional cost of access to the Firth, cause inconvenience, navigational complexity, hamper maritime safety and the potential

impact on the natural environment.

3.4 A copy of the Port of Cromarty Firth Annual Review 2013 ('*Transforming into a Modern Trust Port*') can be found in the Members' bulletin.

4. Summary of concerns raised

4.1 A number of concerns have been expressed around the proposed Port of Nigg. Main concerns are summarised briefly below:

- **Navigation and maritime safety** – The proposed Port of Nigg straddles the main channel into the Cromarty Firth. There would be two statutory harbour authorities with equal powers and duties controlling the passage of shipping into the Cromarty Firth. Concerns are based mainly around added complexity, confusion, maritime safety implications, potential environmental impacts in the event of incidents, the additional cost of passage (pilotage) through two harbour authorities, unnecessary delays and inconvenience to marine operators.
- **Confusion and additional cost** - An example of the potential confusion which could arise is the requirement in the Harbour Revision Order to control vessels in the Port of Nigg whilst the supporting statement indicates that ships passing through the Port of Nigg would remain under the pilotage of the Port of Cromarty Firth. Allied to this, the Port of Nigg will have the power to levy charges on vessels passing through the Port on route to the port of Cromarty Firth.
- **Private v Trust Port** – Port of Nigg would be a private statutory port without the transparency and community focus delivered by Trust Ports. The Scottish Government favours the Trust Port model and the Port of Cromarty Firth is already a Trust Port with powers and duties in the area and a track record in community engagement.
- **Cruise liner visitors** – Cromarty Firth Port Authority has worked hard to build the area's reputation as a cruise liner destination. There are now 70,000 visitors annually to the area coming through the port. The concern is that the proposed new Port of Nigg could jeopardise growth potential in this area as a result of the navigation and maritime safety concerns noted above. Cruise liner operators experiencing additional complexity or uncertainty could choose to visit other destinations.
- **Permitted development rights** – The new Port of Nigg would enjoy Permitted Development Rights as a result of the designation of operational land within the area of the new statutory harbour. There are concerns that the port operator's development proposals are not yet clear and that development deemed permitted could have significant amenity and environmental impacts in the surrounding area. The Nigg Bay area is heavily designated for nature conservation, including SSSI's, SAC and SPA designations.
- **The environment** – As mentioned above, the environment in and around the proposed Port of Nigg is highly prized and subject to significant nature

conservation designations protecting seabirds, dolphins and the natural environment. Although Ministers have confirmed that there is no requirement to provide an EIA in support of the proposed Port of Nigg, operators will have statutory duties to protect and manage the natural environment. The supporting statement does not tackle environmental concerns directly and there remain concerns that two harbour authorities with competing objectives, permitted development rights and the potential for increased complexity of operations within the Firth could have a negative impact on the surrounding environment. In particular there is concern that Nigg Oil Terminal (leased to Talisman Energy) will be under the jurisdiction of the Port of Nigg and the Cromarty/Nigg ferry will pass through the Port of Nigg.

- **Displacement of jobs** – Much has been made of the potential increase in employment opportunities resulting from the creation of the Port of Nigg. However the Port of Cromarty Firth has expressed concern that their anticipated IRM contracts and the developing Norwegian market for rig repairs could be jeopardised by the existence of the new port. More generally there is concern that job displacement is more likely than job creation, at least in the short to medium term.

4.2 Global Energy Nigg Ltd rejects many of these concerns within their supporting statement (appendix 1 pp7 – pp13) where they set out the purpose of the Order, address potential concerns and the need for the Order. It appears their main aim is for greater control over their affairs at Nigg which are currently governed by the CFPA

4.3 Councillors Jimmy Gray, Drew Hendry, Thomas Prag and Carolyn Wilson of the Highland Council met separately with representatives of Global Energy Nigg Ltd and the Port of Cromarty Firth on Wednesday 3rd December when these issues were discussed.

MoU with Cromarty Firth Port Authority

5.

5.1 In March 2013 The Highland Council entered into a Memorandum of Understanding with the CFPA. The intention of the MoU is to promote co-operation and joint working to facilitate the development of new and existing port facilities at Invergordon and to strengthen economic regeneration and employment opportunities within Easter Ross and the Highlands. A copy of the MoU with the CFPA is available on the Members' bulletin for information.

Key issues

6.

6.1 From the Highland Council perspective as a statutory consultee, taking account of concerns noted above, there is clearly a balance to be struck between:

- The benefits of competition and the dis-benefits of having two port authorities competing with each other within the relatively enclosed Cromarty Firth;
- The benefits of public accountability and the dis-benefits of part privatisation of the Cromarty Firth;
- The benefits of planning control and the dis-benefits resulting from permitted development rights, and;

- The benefits of one port authority with duties to protect the natural environment and the dis-benefits of two competing port authorities with equivalent duties.

6.2 Considering concerns summarised above and the Harbour Revision Order as presented, it is recommended that the Council, in this case would favour one publicly accountable port authority with duties and responsibilities for the economy and environment within the Cromarty Firth.

7. The way forward

7.

7.1 The Programme for the Highland Council 'Working together for the Highlands' commits the Council (Economy theme - action 17) to supporting Highland wide, large scale employment growth opportunities in the Cromarty Firth. This commitment was the driver behind the MoU the Council now has with the Port of Cromarty Firth, agreed by Council in March 2013. (Para 5.1 above refers).

7.2 The MoU with the Port of Cromarty Firth recognises that both organisations have a common aim of improving the environment and living standards within the Highland area and that both are committed to the economic regeneration of the Cromarty Firth and the creation of good quality employment opportunities.

7.3 It is difficult to envisage that Global Energy Nigg Ltd would not find these aims equally descriptive of their own activities and ambitions for the Cromarty Firth, and Highland Council would wish to see the two organisations working together to deliver these aims. However it seems unlikely at present that the two organisations will be able to work jointly while the Port of Nigg proposals remain.

7.4 While the Council may wish to object to the current Port of Nigg Harbour revision Order it has a role to play in bringing the two organisations together around the table to establish and agree joint objectives supporting both the Programme commitment and the terms of the MoU with the Port of Cromarty Firth. There may be an opportunity to agree an extended MoU with Port of Cromarty Firth and Global Energy Nigg Ltd. These are discussions that the Council can promote early in the New Year.

8. Resource implications

8.1 Objecting to The Port of Nigg Harbour Revision Order 201[X] may involve the Council in Public Local Inquiry proceedings.

9. Fit with the Programme for the Highland Council 2012-2017

9.1 Commitment 17 within the 'Economy' theme states that the Council will continue to support large scale employment growth opportunities in the Cromarty Firth.

10. Fit with the Single Outcome Agreement

10.1 Considering the Port of Nigg Harbour Revision Order 201[X] assists the Council deliver commitments delivering sustainable economic development opportunities and protecting the natural environment

11. Climate Change and Carbon Clever implications.

11.1 There are no climate change or carbon clever implications arising from this report.

12. Legal, Risk and Equality implications

12.1 There are legal implications arising from the potential appearance at a future Public local Inquiry and supporting representations. There are risk implications for the relationship between the Council, Port of Cromarty Firth and Global Energy Nigg Ltd. There are no equality implications arising from Council consideration of the Port of Nigg application.

13. Rural and Gaelic implications

13.1 There are no rural or Gaelic implications arising from this report.

RECOMMENDATION

Council is invited to:

- consider the terms, potential implications of and issues linked to the proposed Port of Nigg;
- agree to submit an objection to The Port of Nigg Harbour Revision Order 201[X]; and
- facilitate discussions with the Port of Cromarty Firth and Global Energy Nigg Ltd with a view to agreeing joint objectives for securing ongoing sustainable development and enhanced opportunities within the Cromarty Firth.

Designation: Director of Development and Infrastructure

Date: 9 December 2014

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Background papers:

- The Port of Nigg Harbour Revision Order 201[X].
- Global Energy Nigg Ltd – The Port of Nigg Harbour Revision Order 201[X] – Supporting Statement.
- ‘Private Port Threat to Cromarty Firth’ - Press Release – Cromarty Firth Port Authority. 7th November 2014.
- ‘Port of Nigg will benefit all in Cromarty Firth’ – Press Release – Global Energy Group. 11th November 2014.
- ‘Transforming into a Modern Trust Port’ – Port of Cromarty Firth – Annual Review 2013.
- Memorandum of Understanding between The Highland Council & The Cromarty Firth Port Authority. Planning Environment and Development Committee 13th March 2013. (PED 27/13)

GLOBAL ENERGY NIGG LIMITED
THE PORT OF NIGG HARBOUR REVISION ORDER 201[X]
SUPPORTING STATEMENT

Introduction

Global Energy Nigg Limited ("**Global**") operates the existing port facilities at Nigg on the Cromarty Firth which consist of 700,000m² of land including 60,000m² of dry dock and 900m of alongside quay, 36,000m² of sheds {660m of quay will be completed in February 2014 and is accessible with a depth of 12m below Chart Datum at all states of the tide}. This will be the largest operational port facility within the Moray Firth and arguably the largest operational dry dock in Europe ("**Nigg Port**").

Global own and/or lease all of Nigg Port and operates it as a common user facility, although the main users are divisions of the Global Energy group of companies ("**Global Energy Group**"). In the last three years the Global Energy Group have invested over £40m in upgrading the Nigg Port facilities, of which a significant percentage of the capital costs have received grant aid support. The Nigg Port has additionally been designated as an Enterprise Zone by the UK and Scottish Governments.

Adjoining Nigg Port is Nigg Oil Terminal, the site of which is owned by the Global Energy Group and leased to Talisman Energy. This is a crude oil storage and handling facility with direct pipeline to the Beatrice and Jackie oil fields.

To complement its investment in the port, Global has applied to Scottish Ministers for a harbour revision order, the Port of Nigg Harbour Revision Order 201[X] ("**the Order**"), under Section 14 of the Harbours Act 1964 ("**the 1964 Act**") – the extent of the jurisdiction sought by the Order comprises the area of land and adjoining water space of both Nigg Port and Nigg Oil Terminal; the combined port is referred to as "**Port of Nigg**".

Background

Port of Nigg was initially the Nigg fabrication yard established in 1972 by Brown and Root (later becoming Kellogg, Brown and Root ("**KBR**")) trading as Wimpey Highland Fabricators Ltd. Approximately one third of the site including the dry dock and adjoining sea bed is leased from The Wakelyn Trust on a long term lease and the remaining two thirds of land including the Nigg Oil Terminal is owned by the Global – the tenant's interest under the lease and title to the remaining land was previously held KBR and is now held by Global Energy Nigg Limited.

During peak operation, the yard directly employed approximately 5,500 personnel, and indirectly supported an extensive local and national supply chain. Following the collapse of the North Sea oil and gas sector in 1999-2000, and the subsequent closure of the fabrication yards at Nigg and Ardersier some 5,000 jobs and £100 million per annum expenditure was lost from the Inner Moray Firth sub-region.

In 2005, KBR sought the sale of the site, but were unable to reach exit terms on the lease with The Wakelyn Trust. The yard remained unsold and largely vacant until 2010. After a review of the yard, KBR placed it on the open market in April 2010 and after a period of bidding, Global Energy Group plc was named preferred bidder in January 2011. After negotiation of new lease terms with The Wakelyn Trust, the sale was eventually concluded in October 2011 to Global Energy Nigg Ltd, trading as Nigg Energy Park, a wholly owned subsidiary of Global Energy Group plc.

Current commercial operations at Nigg are focused towards oil and gas exploration rig and supply vessel inspection, repair and maintenance (**IRM**), with forward commitments and pending orders for these specialist activities projected well into 2016.

The facility has also been used for offshore renewable energy development in wind, wave and tide projects and is well placed to play a role in the future licenced wind farm developments in the Moray Firth for which the construction phase is due to commence in 2016.

These IRM activities currently directly employ some 400 to 1,500 personnel at Nigg (contract dependent), and are carried out by Global Energy Services ("**GES**") on contract to major customers, whilst Isleburn Ltd. ("**Isleburn**"), who lease premises from Global, undertake subsea and other specialist steel fabrication services and employ around 350 staff. Both companies are wholly owned subsidiaries of Global Energy Group plc. In addition other companies' employees are working on the site. The Port of Nigg is generating approximately £500m per year to the local economy and 2,000 FTE direct and indirect employment opportunities.

In March 2012, Nigg Skills Academy ("**NSA**") was established with support from Scottish Government. NSA to date has provided training to 198 Modern Apprenticeship students in fabrication and welding to National Certificate standard and a further 115 employability fund students on short courses in welding.

Context

Global Energy Group has identified significant opportunities for the Port of Nigg and is investing in the facility to create an internationally competitive industrial multi-user facility providing manufacturing and support services to the energy sectors. These target energy sectors include oil and gas, and renewables.

Recent investment has focused on optimising opportunities within the existing oil and gas sector, and expanding the potential of Nigg through its unique facilities and location, including the dock (wet & dry) and lay down facilities for rig and vessel IRM services and subsea fabrication.

As noted, the IRM and subsea services currently directly employ up to 1,500 personnel at Nigg, and have generated orders and interest extending into 2016.

Commercial interest in the facilities at Nigg now extends globally with the Scottish Government's international agency targeting foreign direct investment opportunities particularly in the renewables industry. Even in the short term however, the existing port and berthing facilities available at Nigg are sub-optimal. It was recognised that the existing south

quay dock facility was constrained by shallow depth and poor structural conditions, and restricted the future operational capabilities of the port both in the size of vessels that can be accommodated and the available depth of water at the quay side. As a result, expansion of the south quay and west finger facilities were essential to take advantage of offshore energy opportunities and were viewed as fundamental to the future growth of activity and subsequent generation of employment at Nigg.

Global has therefore committed to and is in the process of delivering the following port infrastructure investments:

- 660m of fully serviced alongside quay with a dredged depth of -12m below chart datum.
- Dedicated oil rig mooring facilities.
- Improved dry docking facilities.
- Improved port infrastructure land for cargo storage and assembly.
- Improved shed and undercover facilities.
- The future development of a further 180m of serviced alongside quay (currently at the design phase)

These new port facilities demonstrate the commitment of the Global Energy Group to the Cromarty Firth and demonstrate their substantial interest in port infrastructure of the Firth and Scotland.

When the above mentioned capital investment programme completes in February 2015, £40 million will have been invested in the port infrastructure at Port of Nigg to make it the largest operational deep water port facility in the Moray Firth comprising;

- The arguably largest operational graving dock in Europe with an area of 60,000m² (14.82 acres) with 240 metres of quay wall;
- 900 metres of operation quay, accessible at all states of the tide with a further 180 metres of quay under design;
- an area of 700,000m² (173 acres) with dedicated stores, fabrication workshops, preparation areas and support facilities;
- the Nigg Oil Terminal; and
- Nigg Skills Academy.

Global intend that Port of Nigg facilities will be open to common user/multi users and is targeting the following areas of operation:

- Inspection repair and maintenance of oil rigs and oil field support vessels, including dry docking;
- Subsea fabrication, mobilisation and demobilisation support;
- Offshore renewables
- Oil and Gas offshore support services;
- General Shipping;
- Estates management; and
- Quayside operations.

The Order – Overview

The Order's provisions can be summarised as follows:

- **Part 1** makes preliminary provision including provision as to interpretation (**article 2**) and incorporation of the Harbours, Docks and Piers Clauses Act 1847 (**article 3**);
- **Part 2** makes provision for the limits of the port (**article 4**);
- **Part 3** makes provisions as to works:
 - **Article 5** outlines Global's duties and powers and authorises Global to maintain and operate the existing dry dock, quay walls, jetty, set down areas etc and to within the port limits alter, demolish and reconstruct, replace or renew them;
 - **Article 6** authorises subsidiary works;
 - **Article 7** authorises Global to dredge within the port limits, including dredging to form access channels and turning areas and to carry out maintenance dredging at the port;
 - **Article 8** creates an offence of obstructing the works;
 - **Article 9** provides for the works to be deemed part of the port undertaking;
 - **Article 10** provides for approval of tidal works authorised by Scottish Ministers;
 - **Article 11** makes provision as to surveying tidal works;
 - **Article 12** makes provision against danger to navigation;
 - **Article 13** makes provision for abatement of works abandoned or decayed;
 - **Article 14** provides for lighting of tidal works during construction and creates an offence to fail to comply with lighting tidal works as laid down in Article 14(1);
 - **Article 15** makes provision for lighting of tidal works after completion and creates an offence of failure to comply with lighting tidal works after completion as laid down in Article 15(1)
 - **Article 16** provides for areas within the port limits to be deemed to be operational land for the purposes of the Town and Country Planning (Scotland) Act 1997;
- **Part 4** makes provision as to port regulation:
 - **Article 17** authorises Global to appropriate part or parts of the port (including lands, works, machinery etc in the port);
 - **Article 18** grants Global the power to lease etc;

- **Article 19** authorises Global to enter into arrangements to provide supplies;
- **Article 20** provides for moorings and the granting of licences by Global in respect of moorings;
- **Article 21** provides for mooring gangs and the granting of licences by Global in respect of mooring gangs;
- **Article 22** imposes restrictions on persons other than Global undertaking works and dredging within the port without a licence. Article 22(2) creates an offence of failure to comply with requirement to obtain a licence as laid down by Article 22(1);
- **Article 23** makes provision as to licensing of works;
- **Article 24** makes provision as to licensing of dredging;
- **Article 25** authorises Global to grant licences to tugs;
- **Article 26** grants Global the power to make byelaws;
- **Article 27** provides that byelaws made by Global by virtue of Article 26 shall not be operational until confirmed by the Scottish Ministers;
- **Article 28** allows Global to issue general directions to vessels;
- **Article 29** requires the publication of general directions;
- **Article 30** allows Global to issue special directions to vessels;
- **Article 31** makes provision that any general or special direction is not to affect a master's responsibility in respect of his vessel;
- **Article 32** creates an offence for any master to fail to comply with any general or special direction;
- **Article 33** makes provision as to the enforcement of special directions;
- **Article 34** makes provision regarding damage to any work or property of Global in the port;
- **Article 35** requires declaration as to draught and length of vessels;
- **Article 36** creates an offence of obstructing officers of Global or other authorised persons;
- **Article 37** provides for boarding of vessels;
- **Article 38** creates an offence in relation to vessels adrift;
- **Article 38** makes provision as to the removal of obstructions other than vessels, vehicles or wrecks;
- **Article 40** authorises Global to remove unauthorised vehicles;

- **Article 41** grants Global the power to remove goods from the port;
- **Article 42** provides for a defence of due diligence in respect of proceedings for an offence under any provision of the Order;
- **Part 5** makes provision as to charges:
 - **Article 43** authorises Global to levy charges;
 - **Article 44** makes provision as to liability for charges;
 - **Article 45** makes provision as to exemptions and rebates etc in respect of charges;
 - **Article 46** makes provision as to security for charges;
 - **Article 47** makes provision as to liens for charges;
 - **Article 48** authorises Global to prevent a vessel from landing or using port facilities on refusal to pay charges;
 - **Article 49** makes provision as to exemptions from charges;
 - **Article 50** provides for conditions as to payment of charges;
- **Part 6** provides for miscellaneous and general provisions:
 - **Article 51** makes saving provision, making it clear that nothing in the Order shall prejudice or derogate from any of the rights, duties and privileges of the Commissioners of Northern Lighthouses;
 - **Article 52** makes it clear that (in carrying out any works or operations pursuant to the Order) Global must obtain any other consent required for those works or operations under the terms of any other enactment;
 - **Article 53** makes it clear that nothing in the Order prejudicially affects any Crown rights;
 - **Article 54** makes it clear that nothing in the Order shall be deemed to derogate from the rights of the Wakelyn Trustees;
 - **Article 55** provides for the disapplication of the 1973 Act to the port from the coming into force of the Order;
 - **Article 56** restricts the charging powers of CFPAs under the 1973 Act (see below for definitions of these terms) in respect of vessels bound for or originating at the Port of Nigg;
- **Schedule 1** provides for the port limits description; and
- **Schedule 2** contains the port map.

Purpose

The primary aim of the Order is to confer statutory harbour authority status on Global in respect of the Port of Nigg, granting Global powers to maintain and operate their port undertaking and port premises at Port of Nigg. The proposed port limits are set out in the draft Order.

Currently the Cromarty Firth Port Authority (the “**CFPA**”) is the statutory harbour authority in respect of the Cromarty Firth by virtue of the Cromarty Firth Port Authority Order Confirmation Act 1973 as amended (“**the 1973 Act**”).

The extent of CFPA’s jurisdiction as a harbour authority is that which is defined as “the Port” in the 1973 Act. That area of jurisdiction includes Nigg.

Global are seeking statutory harbour authority status in respect of the “port limits”, as defined in the Order and as shown on the port map forming Schedule 2 to the Order.

Global wish to be the statutory harbour authority for Nigg and adjacent parts of the Firth to complement its investments in the port and in order to have suitable powers in place to ensure the improvement, maintenance or management of the Port of Nigg in an efficient and economical manner and otherwise to facilitate the efficient and economic transport of goods and passengers by sea via the Port of Nigg.

Global believes that the 1973 Act is too broad to take into account the needs and operational requirement of such a large port facility as the Port of Nigg. Global’s view is that the powers and duties currently vested CFPA by the 1973 Act do not allow for Global to have adequate control over its Nigg facilities to inter alia meet the objectives stated above.

Global believe that establishing a separate statutory harbour authority for the Port of Nigg will improve accountability to Scottish Ministers and stakeholders by allowing Global to:

- respond to customers’ requirements with greater flexibility;
- appoint a Harbour Master;
- directly regulate the safe movement and operations of vessels within Port of Nigg;
- create byelaws and general directions to improve the efficiency of the port and its safe operation;
- to maintain the port facilities under the ports own power; and
- set charges for its facilities under the Harbours Act 1964.

The Order will substitute Global for CPFA as the statutory harbour authority for Nigg. In addition to powers (and duties) conferred on Global as a result, Global will not require to submit to CPFA controls over works or dredging activities within the area of Global’s jurisdiction.

Making the Order is necessary to ensure that Global have direct control over the operation of the Port of Nigg and of vessels, moorings and dredging activities within its immediate vicinity and to facilitate further investment in Port of Nigg - all without the need to obtain consents from or pay charges to CFPA to do so.

Matters Likely to arise in respect of the Order

The following paragraphs seek to set out Global's initial position on matters in respect of the Order proposed which may be of concern to CFPA or other stakeholders.

1. Statutory basis for seeking statutory harbour authority status (vires)

Section 14(1) of the 1964 Act provides that, subject to the provisions of Section 14 and the following provisions of that Act, a harbour revision order may be made for achieving all or any of the objects specified in Schedule 2 to the 1964 Act.

Section 14(2)(a) provides that a harbour revision order shall not be made in relation to a harbour except upon written application in that behalf by the authority engaged in improving, maintaining or managing it or by a person appearing to the Scottish Ministers to have a substantial interest.

For a HRO, therefore, the applicant must either be an existing harbour authority or a party "with substantial interest". As Global own / lease the Nigg facilities for which it wishes to become statutory harbour authority [**Crown Estate re seabed tbc**] and is investing significantly in them and the immediately adjacent part of the Firth. Global therefore submits that it meets the "substantial interest" test.

The phrase "substantial interest" is not expanded upon or otherwise framed in a manner in the 1964 Act which assists in its application. On a simple interpretation, it could be said to be aimed at providing a filter to exclude trivial or vexatious applications. Whatever the precise meaning or legislative intent, Global are the party currently engaged in the improvement, maintenance and management of Port of Nigg; at which it is a major local employer and at which it is investing significant sums on the creation of improved port facilities. If Global were to be held not to have a "substantial interest" for the provision in question, one has to ask who would.

The objects listed in Schedule 2 to the 1964 Act allow for altering a harbour authority's limits of jurisdiction. Those objects include:

- "1. ...establishing, as the harbour authority, in lieu of the existing one, an existing body designated in that behalf ...";
- "3. Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provisions of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of –
 - (a) improving, maintaining or managing the harbour; ...";
- "4. Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above.";
- "5 Transferring from the authority to another or to the authority from another all or any of the property vested in, as the case may be, the authority or that other and held for

the purposes of the harbour and in so far as they related to the transferred property all or any of the duties and powers imposed and conferred on, as the case may be, the authority or that other by a statutory provision of local application affecting the harbour.”;

- *“6. Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for the limited purposes) such limits as previously settled.”; and*
- *“17. Any object which, though not falling within any of the foregoing paragraphs, appears to the [Scottish Ministers] to be one the achievement of which will conduce to the effective functioning of the harbour.”*

If it is accepted that Global do have a substantial interest in the parts in question of CFPAs' current harbour authority jurisdiction, references in Schedule 2 to the 1964 Act to “the harbour” will, it is submitted for Global fall to be construed as references to the parts of the Firth (as defined in 1973 Act) as are the subject of Global’s application.

Section 14(4) of the 1964 Act provides that *“in the case of a harbour revision order that provides for the establishment of a body as the harbour authority for the harbour to which the order relates in lieu of the existing one, references in paragraphs 2 to 17 of Schedule 2 to this Act to the authority (except in the case of the reference in paragraph 3 the references, other than the second, in paragraph 5 and the second reference in paragraph 11) shall be construed as referring to the body established by the order as the harbour authority, and in the said excepted case shall be construed as referring to the existing one.”*

References to “the harbour” fall to be construed as including “part of” the whole.

If it is not accepted that Global have a substantial interest as referred to above, Global’s view is that paragraph 17 of Schedule 2 nonetheless empowers the Scottish Ministers to grant a harbour revision order which would substitute Global for CFPA in respect of part of the latter’s current jurisdiction.

Section 14 (2)(b) provides that (in addition to the test under Section 14(2)(a) referred to above) a harbour revision order shall not be made in relation to a harbour *“unless [the Scottish Ministers are] satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”*. Global’s view is that the Order meets that test.

Section 14(3) provides that a harbour revision order may include *“all such provisions as appear to the [Scottish Ministers] to be requisite or expedient for rendering of full effect any other provisions of the order and any supplementary, consequential or incidental provisions appearing to [them] to be requisite or expedient for the purposes of or in connection with the order.”* Section 14 (3) empowers the Scottish Ministers to include provisions in an order if they are satisfied that the Order will otherwise achieve one or more of the objects specified in Schedule 2 to the 1964 Act and that both limbs of Section 14(2) can be satisfied.

Amendment of CFPAs' legislation by the Order

CFPAs' powers are underpinned by an Act of Parliament, and CFPA may argue that those powers cannot be legally amended without a further Act of Parliament. Such a claim would assert that it is not competent to amend CFPA's powers (or presumably grant exemptions to restrictions they are empowered to impose) by way of the Order.

Section 14(3) of the Harbours Act 1964 provides (with underlining added for emphasis) as follows :

"A harbour revision order may include all such provisions as appear to the [Scottish Ministers] to be requisite or expedient for rendering of full effect any other provision of the order and any supplementary, consequential or incidental provisions appearing to [them] to be requisite or expedient for the purposes of, or in connection with, the order, including, but without prejudice to the generality of the foregoing words, ... provisions for excluding or modifying any provision of any Act or of any instrument made under any Act (including [the Harbours Act 1964]) and for repealing any statutory provision of local application affecting the harbour to which the order relates"

The leading textbook on the Harbours Act 1964 – "Douglas & Green on the Law of Harbours, Coasts and Pilotage" (5th edition, 1997) – deals with this very point at paragraphs 11.6 – 11.10 as follows: -

"11.6 At the end of Schedule 2, there is a 'sweeping up' provision under which a harbour revision order may be made for any object which, though not falling within any of the foregoing paragraphs, appears to the [Scottish Ministers] to be one the achievement of which will conduce to the efficient functioning of the harbour.

11.7 In addition to these main objects for which a harbour revision order may be made, such an order may also, by virtue of Section 14(3) of the Harbours Act 1964 (as extended by the Transport Act 1981 and the Transport & Works Act 1992) include all such provisions as appear to the [Scottish Ministers] to be requisite or expedient for rendering of full effect any other provision of the order and any supplementary, consequential or incidental provisions appearing to [them] to be requisite or expedient for the purposes of or in connection with the order, including, but without prejudice to the generality of the foregoing words...provisions for excluding or modifying any provision of any Act or of any instrument made under any Act (including the Harbours Act 1964) and for repealing any statutory provisions of local application affecting the harbour to which the order relates.

11.8 A power to include provisions for excluding or modifying any provisions of any Act or any instrument made under an Act and therefore to exclude or modify the application of general legislation if this appears to the [Scottish Ministers] to be requisite or expedient for rendering of full effect any other provision of the order or to be a supplementary, consequential or incidental provision which is requisite or expedient for the purposes of or in connection with the order, was introduced by the Transport & Works Act 1992. It appears that, in the absence of express statutory authority, a harbour revision order could not affect the application of general legislation (partly on grounds of constitutional principle, and also

because the express powers in Section 14(3) and paragraph 3 of Schedule 2 to the Harbours Act for a harbour revision order to repeal and amend the statutory provision of local application seemed to exclude by implication to affect general legislation). However, the power in Section 14(3) to incorporate, with or without modification, 'any provision of ... any ... enactment' appears to apply to general legislation, and it is not unusual for harbour revision orders to include provisions which supplement those of statutory provisions for general application such as the common provisions which supplement the powers of a harbour authority to deal with wrecks under Section 252 of the Merchant Shipping Act 1995. Section 43(3) of the Docks & Harbours Act 1966 authorises a harbour revision order to repeal or amend general legislation for the purpose of securing the welfare of officers or servants of the harbour authority, and empowering that authority to provide, or secure the provision, for or in respect of their officers and servants, of pensions, gratuities and other like benefits (this being the purpose specified in paragraph 15 of Schedule 2 to the Harbours Act 1964).

11.9 *Section 14(3) of the Harbours Act also prescribes the maximum penalties which may be provided by a penal provision contained in a harbour revision order...*

11.10 *Under the terms of Section 14(2)(b) of the Harbours Act, the [Scottish Ministers] cannot in most cases make a harbour revision order unless [they are] satisfied that this is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or to facilitate a more efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships ... Section 2(a) of Section 14 provides that the conditions precedent for the making of an order specified in Section 14(2)(b) do not apply where the objects of the order are the repeal of obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour or of consolidating any statutory provisions of local application affecting the harbour."*

Therefore, it is clear that Section 14(3) of the 1964 is the answer to the point which is anticipated from CFPA.

Examples of use of this provision are as follows: -

- **The Caledonian MacBrayne Limited (Armadale) Harbour Revision Order 1992**

Article 7 set out new harbour limits, Article 9 applied the Highland Regional Council (Harbours) Order Confirmation Act 1991 (the "1991 Act") to the harbour undertaking and incorporated its provisions (with specified exceptions) into the Order; Article 15 repealed the harbour limits as set out in the 1991 Act.

- **The Caledonian Maritime Assets Limited (Largs) Harbour Revision Order 2008**

Article 56 repealed the Largs Harbour Act 1832 (except certain provisions), elements of the Glasgow and South Western Railway Act 1899 and the application to Largs Harbour of the London Midland and Scottish Railway Order Confirmation Act 1933.

- **The Bristol Port (Deep Sea Container Terminal) Harbour Revision Order 2010**

Article 26 provides for defences to and exemptions from statutory nuisance provisions of Environmental Protection Act 1990 and Control of Pollution Act 1974 for works authorised by and powers granted by the Order.

- **The Rosyth International Container Terminal (Harbour Revision) Order 2013**

Article 4(5) provides for an exclusion from the jurisdiction conferred by the Forth Ports Authority Order Confirmation Act 1969 (the "1969 Act"). Article 19 provides for exemption from Section 26 (restriction on construction of works and dredging) of the 1969 Act for works and dredging authorised by the Order.

2. The Need for the Order

Please refer firstly to the comments above under the "Purpose" heading, within which Global submit the case for the Order is clearly stated.

The development of Nigg by Global as the largest port facility in the Cromarty Firth creates a prospect of a large volume of shipping activity taking place in a relatively small area of the Firth. Global wish to be the statutory harbour authority for Nigg and adjacent parts of the Firth to complement its investments in the port and in order to have suitable powers in place to ensure the improvement, maintenance or management of the Port of Nigg in an efficient and economical manner and otherwise to facilitate the efficient and economic transport of goods and passengers by sea via the Port of Nigg.

In seeking the Order consideration has been given by Global to the current jurisdiction of the 1973 Act administered by CFPA. It is not considered the jurisdiction sought by the Port of Nigg will not have any detrimental effect on safe navigation.

It is envisaged that CFPA would remain the Competent Harbour Authority for providing of pilotage services under the Pilotage Act 1973.

The Port of Nigg will work closely with CFPA in ensuring compliance with all statutory duties and functions taking place within their jurisdictions and adjoining waters.

It is not the intention of the Port of Nigg to reduce or diminish the current statutory role of CFPA under the 1973 Act in respect of the area of jurisdiction to be retained by CFPA.

Global's aim is to ensure a level playing field between the two ports and improve the level of service and standards offered to stakeholders.

3. The extent of Global's proposed jurisdiction and that to be retained by CFPA

Global are seeking jurisdiction as harbour authority in respect of the area shown outlined in blue on the plan attached. This area is defined as "port limits" in the Order.

Careful consideration has been given to the area of the Firth to be included as the approaches to Port of Nigg in light of the size of vessels using and likely to use the port, namely large deep drafted tankers, rigs and support vessels. The proposed port limits for Port of Nigg's jurisdiction will allow these vessels to safely approach the berths within the navigational direction and control of Global's harbour master. Currently these vessels are

controlled by a vessel traffic information centre at Invergordon without the aid of any visual or radar assistance.

Global submit that existing port operations on the Firth will not be prejudiced by the establishment of the Port of Nigg. CFPA may, however, raise concerns in relation to navigational safety and impacts on shipping and the power to dredge.

In relation to possible arguments over impacts on shipping and navigational safety, CFPA may contend that:-

- navigational issues would arise because of conflict within its role as the incumbent harbour and pilotage authorities on the Firth; and
- broader safety issues arising out of vessel movements in and around the Port of Nigg, including the ability of Global to discharge responsibilities that it may have as harbour authority and/or pilotage authority.

The objective of the Order is to improve safe navigation by having local control over vessels using the facilities at Port Nigg. The Order recognises that vessels transiting through the areas of jurisdiction of the Port of Nigg will remain under the control of the conservancy authority, which is CFPA. In the interests of safe navigation, it is not intended that the Port of Nigg will have priority control over vessels transiting through the Port of Nigg areas of jurisdiction but instead such vessels will remain with CFPA as conservancy authority.

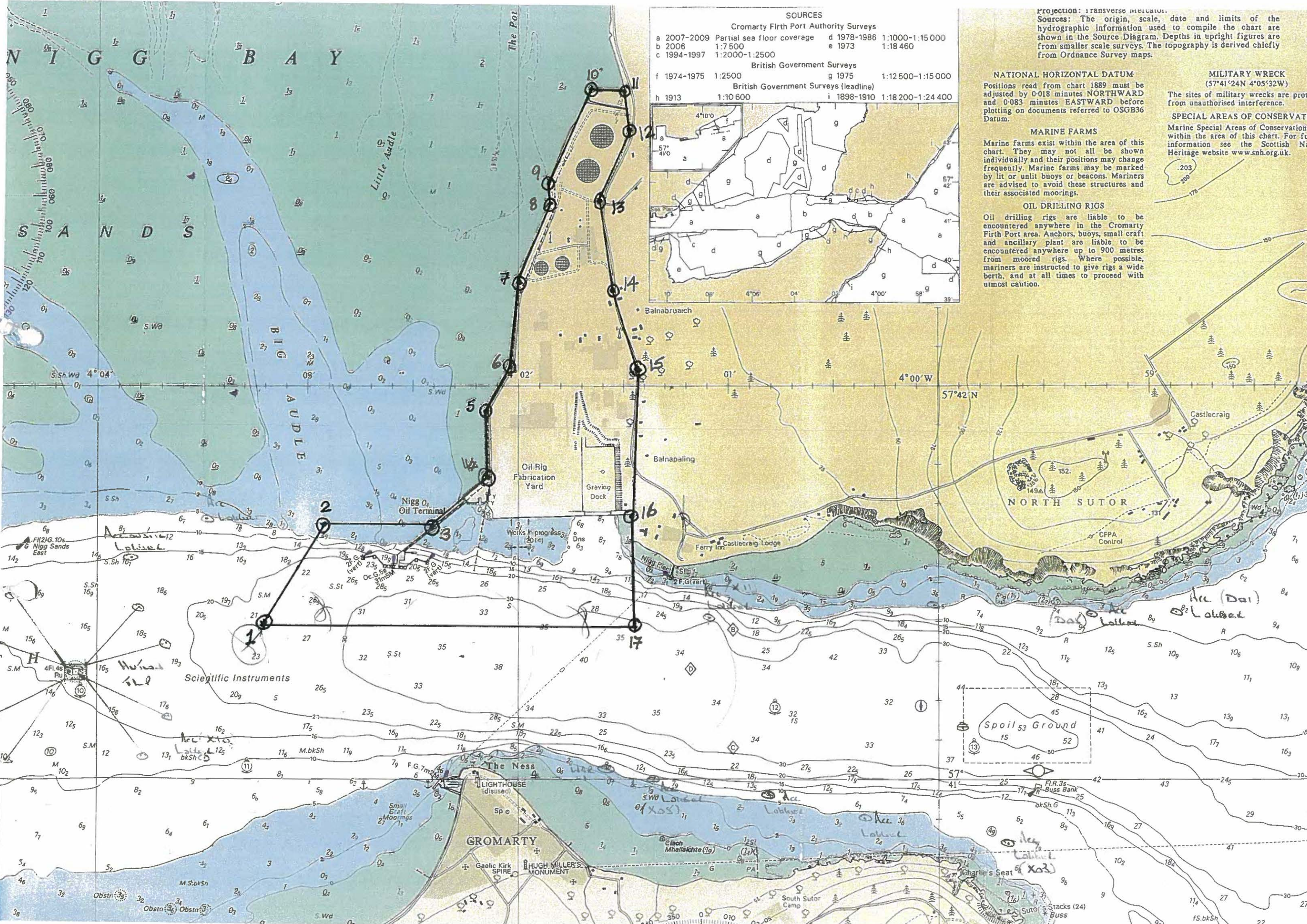
Statutory harbour authorities exist as carve outs from the geographical extent of jurisdiction of estuary harbour authorities elsewhere. There are therefore precedents which can be drawn on in respect of interface questions.

In relation to dredging, CFPA may seek to require that Global obtain CFPA consent/licence to dredge, including capital dredging to form a new approach channel and thereafter maintenance dredging.

Global considers that legal control of dredged approaches to provide the necessary level of operational control involves:-

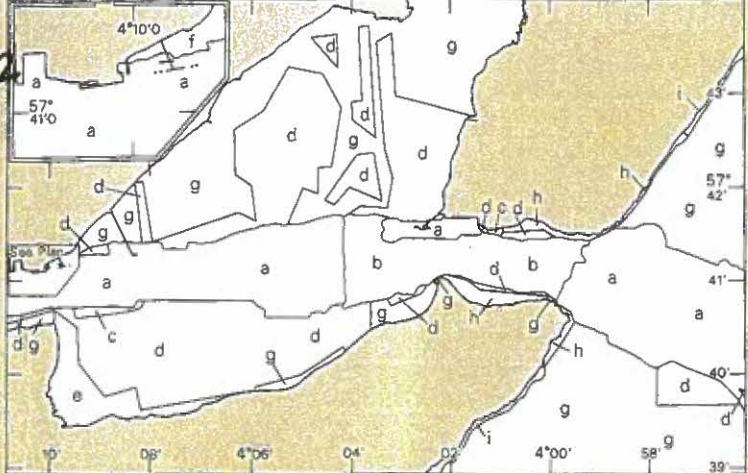
- inclusion of the areas within the Port of Nigg limits so that there is clarity as to the areas under the control of Global as harbour authority, with no dubiety as to who is in control of those areas; and
- an unambiguous legal right to carry out dredging in those areas to maintain its own approaches.

Should the Order be approved by the Scottish Ministers, CFPA will have no powers under the 1973 Act within the port limits and as such CFPA will not be able to enforce any previous dredging licensing requirements under the 1973 Act. Global, as statutory harbour authority, will take over responsibility for the maintenance of safe navigation and structures below mean high water within the port limits.



SOURCES

- Cromarty Firth Port Authority Surveys
 a 2007-2009 Partial sea floor coverage d 1978-1986 1:1000-1:15 000
 b 2006 1:7 500 e 1973 1:18 460
 c 1994-1997 1:2000-1:2500
 British Government Surveys
 f 1974-1975 1:2500 g 1975 1:12 500-1:15 000
 British Government Surveys (leadline)
 h 1913 1:10 600 i 1898-1910 1:18 200-1:24 400



Projection: transverse mercator.
 Sources: The origin, scale, date and limits of the hydrographic information used to compile the chart are shown in the Source Diagram. Depths in upright figures are from smaller scale surveys. The topography is derived chiefly from Ordnance Survey maps.

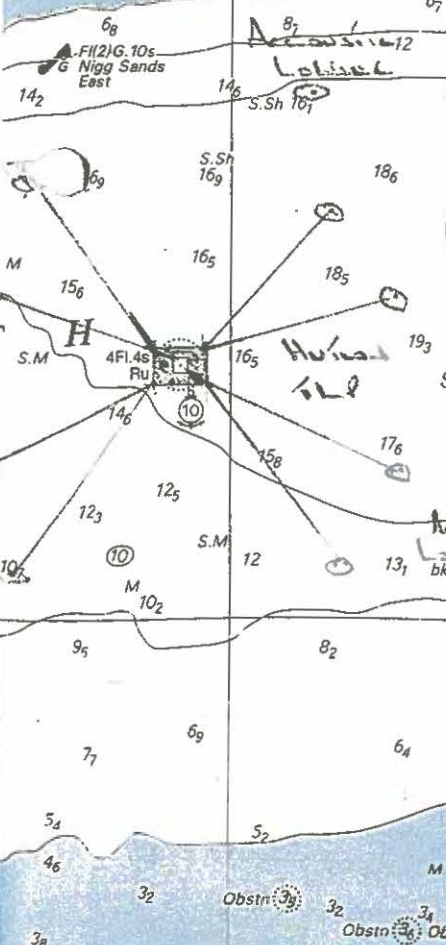
NATIONAL HORIZONTAL DATUM
 Positions read from chart 1889 must be adjusted by 0.018 minutes NORTHWARD and 0.083 minutes EASTWARD before plotting on documents referred to OSGB36 Datum.

MILITARY WRECK
 (57°41'24N 4°05'32W)
 The sites of military wrecks are protected from unauthorised interference.

MARINE FARMS
 Marine farms exist within the area of this chart. They may not all be shown individually and their positions may change frequently. Marine farms may be marked by lit or unlit buoys or beacons. Mariners are advised to avoid these structures and their associated moorings.

SPECIAL AREAS OF CONSERVATION
 Marine Special Areas of Conservation exist within the area of this chart. For further information see the Scottish Natural Heritage website www.snh.org.uk.

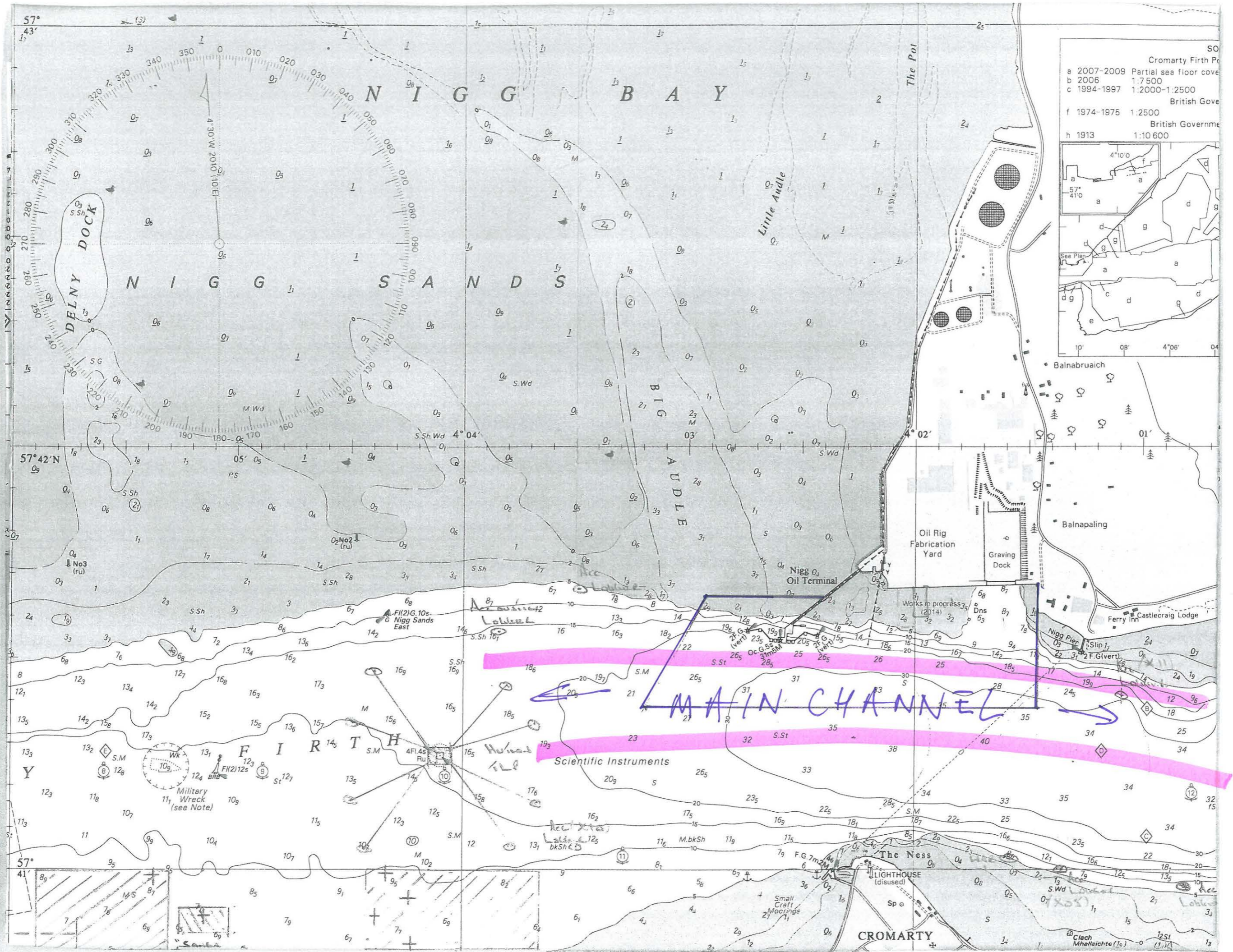
OIL DRILLING RIGS
 Oil drilling rigs are liable to be encountered anywhere in the Cromarty Firth Port area. Anchors, buoys, small craft and ancillary plant are liable to be encountered anywhere up to 900 metres from moored rigs. Where possible, mariners are instructed to give rigs a wide berth, and at all times to proceed with utmost caution.



GROMARTY
 Lighthouse (disused)
 Gaelic Kirk Spire
 HUGH MILLER'S MONUMENT
 South Sutor Camp

Spoils Ground
 15 52 46 30

Acc. (Dol)
 Acc. (Dol) 82
 Acc. (Dol) 89
 Acc. (Dol) 94
 Acc. (Dol) 99
 Acc. (Dol) 106
 Acc. (Dol) 111
 Acc. (Dol) 116
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 Acc. (Dol) 295
 Acc. (Dol) 300



SO
 a 2007-2009 Partial sea floor cover
 b 2006 1:7 500
 c 1994-1997 1:2000-1:2500
 British Govern
 f 1974-1975 1:2500
 British Governme
 h 1913 1:10 600

MAIN CHANNEL

Scientific Instruments

Military Wreck (see Note)

CROMARTY