

[REDACTED]

From: [REDACTED]
Sent: 14 March 2016 16:40
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: EPS assessment for ADD at fish farms

Hi [REDACTED]

I don't think we have anything to add to this – we haven't seen any applications for use of ADD at fish farms either.

Regards,
[REDACTED]

[REDACTED]

Marine Scotland - [REDACTED]

From: [REDACTED]
Sent: 14 March 2016 14:31
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: EPS assessment for ADD at fish farms

Thank you [REDACTED], very useful indeed,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 14 March 2016 11:43
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: EPS assessment for ADD at fish farms

Hi

To date, we have not received any applications for ADD use at fish farms.

The process highlighted in the third bullet point is correct, although we may not always consult MSS depending on the nature of the application. Currently we consult SNH on all applications.

I have cc'd [redacted] in case they wish to add anything.

Regards

From: [redacted]
Sent: 14 March 2016 10:30
To: [redacted]
Cc: [redacted]
Subject: EPS assessment for ADD at fish farms

Hi

I remember there have been several meetings on this topic last summer but I'm not sure whether a conclusion has been reached regarding EPS licences for ADD use at fish farms? The situation last year was as follows:

- LA consult SNH on fish farm applications, and SNH offer advice on EPS
- Often no EPS survey data or protection plan is provided, nonetheless SNH will often advise on whether a licence to disturb EPS is required and potential mitigation
- The licence assessment will be carried out by Licensing Operations Team (Marine Scotland) using the information provided by the developer and advice from Marine Scotland Science (MSS) and Scottish Natural Heritage" (quote from MS EPS guidance) Regulation 14(5) of the Habitats Regulations does not appear to require SNH to be consulted on all EPS applications. Clarification required on whether SNH advice should be limited to the third test on Favourable Conservation Status?

Am I correct in assuming that there is currently no EPS assessment undertaken for use of ADDs at fish farms?

Many thanks,

[redacted]
marinescotland

[Redacted]

From: [Redacted]
Sent: 13 October 2016 11:23
To: [Redacted]
Cc: [Redacted]
Subject: RE: ADD use and SOI questionnaire

Ok, so after speaking to [Redacted] at SMRU, it seems that out of all the ADD models available on the market, only Ace Aquatec has an actual triggering mechanism when fish are excited / panicked – when the fish rush around they bash into a sensor and that can trigger the transducer to make a noise.

Mohn Aqua does not have a triggering system, but it has a low power mode you can switch to high power when you feel the need (you can check the weblink for more info).

Note that in the survey only 2 say ADD triggered 'when the fish behaviour changes' – this is the cue that one site is using Ace Aquatec with a triggering system. The one other person who said they are triggered by fish behaviour with a Mohn Aqua must be referring to visual observations of fish behaviour not a triggering device because the Mohn Aqua device has no trigger (as above).

So clearly there are some interpretation issues here - I suspect they may be interpreting the word triggered in a more vague way – like they switch them on when they see seals.

I went back to our IT developers to ask for some changes, unfortunately they are reluctant to make any changes in case it might cause bugs or twitches and they just don't want to risk it. It will have to wait until next year. I will have to submit the request as early as possible as I understand they are also very short on staff. So I suggest we add the following questions to be added next year, but I would be grateful for any other suggestions from your side.

- 'If ADD triggered, does the device has its own triggering system or is it switched on manually'
- 'Please specify the amount of time the device is kept 'on' and is emitting noise'

We can definitely look at the amount of noise the devices are emitting and include this in the report.

Thanks.

[Redacted]

[Redacted]

From: [Redacted]
Sent: 11 October 2016 14:35
To: [Redacted]
Cc: [Redacted]
Subject: ADD use and SOI questionnaire

Hello [Redacted] for info

Thanks for getting back to me re the seal licensing survey already being online.

Just been thinking a bit more about this, and some of our recent internal discussions about ADD use in the HP cSAC. We want to discuss "best practice" ADD use with industry, and the potential amount of noise being emitted in the cSAC from ADDs– with an overall aim of reducing that noise where we can. We therefore were thinking triggered devices might be a preferred approach.

Scottish Natural Heritage

[Redacted text block]

SNH / MS Discussion on ADDs and EPS - 22nd April 2015

Meeting notes

[Redacted]

Attendees:

SNH: [Redacted]

MS: [Redacted]

1. Intro / Context to ADD/EPS Issue

- Welcome and intro - [Redacted]
- Intro - [Redacted]
- Background presentation - [Redacted]

2. Consideration of EPS licensing needs for ADD development

- Discussion structures using the MS guidance flowchart (pg 3 www.scotland.gov.uk/Resource/0044/00446679.pdf)
- Are EPS likely to be present?
 - It was agreed for the purposes of assessing licence requirements that it could be assumed that there were EPS species present in all locations. It is likely that harbour porpoise at least will be present. This assumption was preferred instead of any requirement for the industry to undertake survey work.
- Are you planning an activity which could potentially cause injury or disturbance to marine EPS?
 - Have no definitive information on any ADDs which could allow us to be sure they weren't causing disturbance; therefore the potential to cause injury or disturbance can not be refuted. Given lack of knowledge and provisions in guidance to avoid or mitigate against disturbance, have to conclude 'yes' at present time
 - Purpose of ADDs is to disturb, and so will disturb cetaceans unless designed specifically to target seals and not cetaceans (eg GenusWave)
 - Potential problems with the interpretation of the guidance - no suitable test - no precedent set. Need clarification of guidance before proceeding down the path of a regulatory change.
 - Likely push back from Aquaculture industry who may not accept preceding argument. Discussion centred on whether it could be proven that the aquaculture companies' use of ADDs could be held as 'reckless' disturbance'
- Can the impact be fully or partially mitigated?
 - [Redacted] detailed our thoughts on mitigation possibilities and that it was our conclusion that theoretically, yes, mitigation could be applied in certain circumstances. In

practice, however, all would have logistical or financial implications for aquaculture companies that would render them, for the most part, infeasible to apply.

- [redacted] made comment that we do not have the regulatory regime to say that if a specific device was being used that there would not be an EPS offence.
- It was noted that, without an EPS licence, use of ADDs can't actually be controlled nor mitigation enforced. There is a lack of certainty about where 'mitigation' fits within the EPS licensing process. Is it applied to prevent need for an EPS licence or to enable ADD use on provision of an EPS licence.
- Suggestion was made that good practice could be encouraged by tightening of the ADD specifications and guidance on ADD use within the industry's best practice guidelines, though again this may not be palatable to the industry.
- Will an offence be committed despite mitigation plans?
 - The definition of disturbance was queried.
 - Is it likely that an offence will be committed?
 - Whole discussion boils down to the definition and application of the term 'reckless'.
 - Suggestion was made that awareness that ADDs could cause disturbance should be noted in guidance (after meeting note – MS guidance pg 15 section 2.2 notes ADD *"to be an activity that have the potential in certain circumstances to be associated with the disturbance, injury and/or killing of cetaceans"*)
 - [redacted] – no case law
 - [redacted] – only one case – [redacted] – Moray Firth – Jet skis
 - [redacted] – case for Industry led guidance
 - Argument made that it is MS and SNH that need to set the guidance.
 - [redacted] – check the wording relating to reg 39(1 & 2) this currently reads that disturbance should affect the conservation level of the species – high bar –
 - England do not have 39(2) and the specifications relate to terrestrial species and therefore do not make sense for marine mobile species.
 - There was consensus that there was a need for the control of ADD use, but perhaps through planning.
 - [redacted] – explained our proposed tiered approach to licensing
 - It was commented that this would be where an assessment of risk would be needed.
- General discussion
 - There was no agreement that EPS licensing was appropriate for the aquaculture industry.
 - There was agreement that if a marine renewable developer was to deploy an ADD to deter animals prior to piling that this would constitute deliberate disturbance and require an EPS licence.
 - Marine Scotland mentioned that they were due to improve the on-line survey for fish farms in relation to the shooting of seals. The suggestion was made that more questions could be asked about ADD usage.
 - [redacted] – mentioned some SARF work that looked at the % of ADD use at fish farms – It was [redacted] recollection that most FF use ADDs.

- [redacted] – queried whether fish farm accreditation process was moving away from the use of ADDs (I missed the answer to this..)
 - The point was made that local authorities would need to do the AA with respect to any potential harbour porpoise SAC. [redacted] made the point that they would assess against the current situation – ie for the west coast the present ADD use would be considered as the baseline situation.
 - Our advice goes to the local authority
 - We have advised against ADD use in Scapa flow and the Small Isles also Yell sound in Shetland.
 - Industry had accepted this stipulation
 - [redacted] mentioned the work that was being drafted by [redacted] on dredging where he mentions that ADDs would be ineffective for BND.
 - [redacted] – this is what [redacted] states in the text, but the work that is cited alongside this statement refers to the pinger type ADD rather than the louder aquaculture ADD. (post meeting note – it may be that some ADDs do not work for some species – probably due to the frequency content and or whether the species in question associates the noise with a potential hazard – this is the aim of the ORJIP project 4 phase 2 to test the efficacy on all species of interest).
 - Comment made that in Aquaculture there is a condition in planning that if an ADD is to be deployed it needs to be agreed with the LA and SNH – but MS are the licensing authority.
 - Possible inconsistency between existing guidance and legislation.
 - Noted that EPS licenses were issues where an ADD was going to be used in salmon rivers and the applicant had assumed that this was necessary.
 - We were asked if we had consulted legal advice before issuing EPS licences for disturbance, we replied that we thought not – because to us it seemed clear that it was needed.
- Clarifications of the roles of MS and SNH for marine EPS licensing [redacted] paper)
 - [redacted] tried to take us through the questions posed by [redacted] paper. It was felt that some of the questions were premature in that the regulatory regime was needed first if there was to be a change for ADD use in the Aquaculture industry.
 - Most EPS licenses so far have been connected with Geophy activities. [redacted] already applies a filter on the activities that potentially require an EPS licence, but this is set quite low, so there are instances where we have gone back and confirmed that no licence is required.
 - Potentially we could generate standing advice for Geophys applications – however this was not considered necessary it was preferred to continue as we are as the EPS guidance is still considered new.
- Action points
 - Marine Scotland to consider the interpretation of the term 'reckless'

- Marine Scotland to look into the issue relating to the wording in the guidance relating to REG 39(1 & 2) and to clarify the sections in the guidance.
 - In doing this, [redacted] will clarify the Commission Guidance.
 - [redacted] will ask supplementary questions to SMRU relating to the evidence behind disturbance of cetaceans from ADDs
 - Also to ask SMRU if they can discriminate ADDs that are likely to cause disturbance and those that are unlikely to,
- Roles and responsibilities to be agreed after the answers to the above are considered
 - The question was raised as to what other options there might be if rackless does not apply.
 - Incorporate into the industries code of practice – but this route has no weight and relies completely on good practice.
 - Possible route through seal shooting licenses – could be used to apply pressure – for example seal licenses are not granted unless certain ADDs are used...

DRAFT

[REDACTED]

From: [REDACTED]
Sent: 28 October 2016 10:36
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: EPS and ADD use at fish farms meeting

Hi [REDACTED]

I hope that you are well.

I will be attending the meeting on 8 November so I would be grateful if you could keep me copied into any correspondence. Thank you.

How is the basking shark analysis coming along? It would be good to touch base soon.

Best wishes

From: [REDACTED]
Sent: 27 October 2016 14:13
To: [REDACTED] (MARLAB); [REDACTED] (MARLAB); [REDACTED]
Hall;
Subject: RE: EPS and ADD use at fish farms meeting

Hello,
Just to confirm we can hold this meeting on 8th November in Edinburgh at the SNH Silvan House office on Corstorphine Road.
A start time of 11.30 until 3.30 seems to fit in with trains.
Many thanks to all,

From: [REDACTED]
Sent: 27 October 2016 11:43
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: EPS and ADD use at fish farms meeting

Sorry for delay. In reply to 8 November. OK for me but Edinburgh. Would be best if possible. Please.

Regards
[REDACTED]

Sent from my BlackBerry 10 smartphone.

[REDACTED]

~~Thanks~~

[REDACTED]

[REDACTED]

Scottish Natural Heritage

[REDACTED]

[REDACTED]

[REDACTED]

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dìomhaire agus airson an neach no buidheann ainmichte a-
mhàin. Mas e gun d' fhuair sibh an post-dealain seo le
measachd, cuiribh fios dhan manaighear-siostaim no reach-
sgrìobhadh.

Thoiribh an aire airson adhbharan gnòthaich, 's dòcha gun tèid
sùil a chur air puist dealain a' lighinn a-steach agus a' dol a-
mach bhò SNE.

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Dh'fhaodadh gum bi teachdaireachd sam bith bhò Riaghaltas na h Alba air a chlàradh seo air a sgrùdadh airson dearbhadh gu bheil an eòlas ag obair gu h àifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach cill beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h Alba.

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Salmon Aquaculture and Seal Working Group Meeting 17

11th November 2016

10:30-15:00*

RSPCA Wilherforce Road Horsham

Attendees:

Confirmed attendees:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED] + n (Skype?)
5. [REDACTED]
6. [REDACTED]
7. [REDACTED] (Skype?)
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED] (Skype)
12. [REDACTED] (?)
13. [REDACTED] (late)
14. [REDACTED]
15. [REDACTED]

Apologies

1. [REDACTED] - Marine Scotland
2. [REDACTED] - Crown Estates
3. [REDACTED]
4. SNH ??

DRAFT AGENDA

1. Opening matters (standing items):

- a. Introductions and Housekeeping
- b. Minutes from Meeting 15
- c. Previous Actions.

2. Latest SG Seal Shooting Figures

??? who will table???

3. Update from Marine Harvest (█)

Anything to report ?? Latest shooting figures and salmon losses –
█ to supply

4. Update from FF/RSPCA (█)

Post mortem investigations

(Lunch provided by RSPCA - around 1pm

5. Seal trapping for translocation – █

6. Welfare implications of seal shooting (█)

7. Any Other Business

9. Next meeting

Actions from last meeting #16 April 2016

Draft Consolidated Action Points from SASWG 16

1. Action [redacted] to find regional figures for PBR calculations and circulate to group. DONE
2. Action [redacted] to check dates the ADD system was changed at Sconser in 2015– did seal deprecation cease once a new ADD system was installed – or before, or after? ??
3. Action [redacted] to circulate PDF of MHS presentation. DONE
4. Action [redacted] to take suggestions for further analysis of shooting incidents back to MHS
5. Action [redacted] to organise meeting with FF members to address [redacted] concerns
6. Action [redacted] to circulate a copy of presentation, report and link to the videos. DONE
7. Action [redacted] to circulate his own timeline on startle response device
8. Action [redacted] to make enquires about state of developments on the startle device within the University of St Andrews
9. Action [redacted] to approach Knox nets and/or other net manufacturers to try to build on previous studies examining net deformation by seals in captivity ...
10. Action [redacted] to consult with group on suitable dates later, and with JC about venue availability

Salmon Aquaculture and Seals Working Group Meeting No 16

April 6th 2016, Marine Harvest, Rosyth

Draft Minutes for Approval at 17 meeting

Present:

[REDACTED] (SMRU – Chair), [REDACTED] (Marine Harvest – Host), [REDACTED] (RSPCA), [REDACTED] (Aquascot), [REDACTED] (Waitrose), [REDACTED] (RSPCA), [REDACTED] (Seal Protection Action Group), [REDACTED] (RSPCA), [REDACTED] (Born free Foundation), [REDACTED] (International Animal Rescue), [REDACTED] (RSPCA), [REDACTED] (Freedom Food), [REDACTED] (Freedom Food), [REDACTED] (standing in for [REDACTED] – Scottish National Heritage), [REDACTED] (SSPO), [REDACTED] (SMRU – minutes), [REDACTED] (SNH – remote)

Previous minutes:

[REDACTED] had pointed out that AP 4 should not have been directed at FF. The substance of AP 4 is anyway subsumed into a wider Initiative by FF to organise a workshop with members to address key issues.

Minutes approved subject to above.

Actions arising from previous meeting as listed:

1. RSPCA/SMRU to organise a meeting with marine Scotland to discuss FF 'last resort' requirement and its applicability to government license conditions
2. FF/SSPO to consider ways of improving information gathering on seal predation mitigation techniques and dissemination within industry
3. [REDACTED] to circulate list of issues, group to comment on points worth seeking industry feedback on (document attached – research themes and discussion points)
4. [REDACTED] to circulate questions to industry members based on agreed key issues with a view to getting responses in time for December STAG meeting
5. FF (in consultation with MH/SMRU) to approach ADD manufacturers to follow-up on feedback on device innovation and monitoring, and arrange a meeting
6. MH to report back to group on its investigations into increased seal shooting incidents in 2015, and to feed back to FF on how standards might evolve in light of its findings
7. [REDACTED] encourage Waitrose/Aquascot to participate in the group
8. FF to inform the group on the agenda and outcomes of its October meeting with its members (document attached - FF members meeting)

Presentation from ██████████ on recent research at SMRU – University of St Andrews

- SARF funded project using SMRU's captive seal facility to examine how seals manipulate fish through nets
 - Seals difficult to train to take fish through netting – not innately obvious to them
 - Seals prefer to use flippers to manipulate fish
 - Very hard to bite fish through meshes unless they can also hold them in a fold of netting ...
 - Seals able to exert a surprising amount of force (up to 1000N)
 - Mechanism mainly uses head lunges – neck/shoulder muscles not 'ramming'
 - Even smaller animals expected to be able to move base of a typical net by around 30cm due to nylon elasticity.
- Marine Harvest & Sainsbury's funded project looking at sound propagation of an Airmar and Ace-Aquatec device
 - Single transducer showed that sound shadowing can occur -- a 3dB loss was found from one side of the site to the other due to netting and other infrastructure
 - But when 8 transducers in use -- site was effectively saturated with signal
- Action ██████ to circulate a copy of presentation, report and link to the videos

AOB

- ██████ raised question of porpoise SACs – will they prevent the use of ADDs?
 - ██████ – SNH is currently consulting on plans for SAC, see website for consultation details and to contribute
 - See Management Options Paper (MOP) on website for reference as to where discussions have got to
 - SNH internal noise propagation modelling exercise considered the scale of potential HP disturbance zones.
 - Modelled disturbance zones were not large in comparison to the extent of the HP SAC – but highlighted potential barrier zones within narrows and straits (eg Sound of Mull)
 - They believe that there is no need to alter the status quo in any significant manner in response to the SAC
 - But they would like to continue to push toward more targeted devices, and SNH are currently supporting a project through SARF with this intention
- ██████ asked for details on progress with startle response device
 - Concern that public money had been spent and the device is still not available
 - No-one aware of any progress since this was last discussed
 - ██████ asked for a summary of history events – who should the group be asking/leaning on for details and to produce results?
 - Action ██████ to circulate his own timeline on startle response device
 - Action ██████ to make enquires about state of developments on the startle device within the University of St Andrews
- Future Directions for SASWG
 - ██████ concerned the group was not revisiting previous suggestions for research themes

- o Eleven themes discussed*
 - It was felt that there is no suitable mechanism for the group to take action
- Action [redacted] to approach Knox nets and/or other net manufacturers to try to build on previous studies examining net deformation by seals in captivity
 - o It was felt this could be an area where progress could be made

Next SASWG Meeting

- RSPCA offered facilities in Sussex for next meeting
- About 6 months' time
- Action [redacted] to consult with group on suitable dates later, and with [redacted] about venue availability
- [redacted] emphasised need for members to make extra effort to attend with the group's new biannual schedule.

Meeting closed at 1500

Draft Consolidated Action Points from SASWG 16

1. Action [redacted] to find regional figures for PBR calculations and circulate to group.
2. Action [redacted] to check dates the ADD system was changed at Sconser in 2015– did seal depredation cease once a new ADD system was installed – or before, or after?
3. Action [redacted] to circulate PDF of MHS presentation
4. Action [redacted] to take suggestions for further analysis of shooting incidents back to MHS
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9. Action [redacted] to approach Knox nets and/or other net manufacturers to try to build on previous studies examining net deformation by seals in captivity
10. Action [redacted] to consult with group on suitable dates later, and with [redacted] about venue availability

* The eleven themes or areas for further work previously identified by the Group are:

Working Group's Opinions on Which Methods are Most Promising

METHOD	Average Rank
1. Modifications and improvements to ADDs (including triggered devices)	3.0
2. Improved understanding of how seals are able to damage fish without holing the net	3.3
3. Measures for validating acoustic deterrents functioning properly	4.3
4. Analysis of existing data on site characteristics and seal damage and seal shooting	4.5
5. Improvements to net tensioning	4.8

6. Trialling new netting materials	5.0
7. Approaches in other countries	5.3
8. Use of lower frequency transducers (maybe should be included in mods to ADDs above)	6.0
9. Use of electric fields as a deterrent	6.5
10. Lighting or not lighting as a deterrent	9.0
11. Aversive tastes	9.8

Seal shooting: Key issues to address and consider taking forward

Funding

1) How do we go about managing funds for getting research done?

- Possible routes – use RSPCA as a front for funding – to hold funds on an ad hoc basis
- See if SASWG itself could be a funding body – what legal admin constraints
- SARF – possible links – could we co-opt them
- **Best option may be to fund a PhD studentship (an experienced candidate is available) – which would have advantages of :**
 - a) probably being cheaper than commissioned research
 - b) enabling one person to get to grips with several issues at the same time

Other issues

2) **Carcass collection** – can we improve the carcass collection scheme – but maybe via Marine Scotland?

3) **Investigative team** - What do we do to investigate promptly when high levels of damage occur at a site precipitating shooting.... who will or can investigate and how? What resources are needed or available? What are the constraints?

Research topics

4) Analysis of data on damage and shooting

- Company records - analyse data going back years (don't forget effect of lights)
- Ongoing data collection / interviews by FF / RSPCA
- Licencing scheme data from Marine Scotland
- Feedback from companies about other approaches e.g. Econet

Explore funding some research analysis on each and all of the above areas by, or in co-operation with, Industry / RSPCA / Scot Gov.

5) **Cameras on site** - Get cameras on sites with problems to find out more about seal behaviour. This would require complete cooperation from industry and would need to address any industry concerns about footage of seals damaging fish, but there are ways of doing so.

- 6) **Net trials** - Do more trials in the SMRU seal pool to explore how different netting materials affect the ability of seals to take fish from behind them (e.g. net stretchiness or how easy it is to manipulate) -
- 7) **ADD testing stick** – explore this further and get a better prototype developed for wider use.
- 8) **Electric fields** - Possible further work either testing or developing deterrent
- 7) **Taste or texture aversion** - Can we make nets taste or feel bad enough that seals do not want to touch them.
- 8) **Computer modelling** – to look at net design, deformation and tensioning
- (9) **Seal trap** – develop a seal trap and possible relocation programme, tagging and release to see if animals return. Trial would mean zero kills and possibly offer solution to predation issue as habituated seal most likely to be caught and removed. Thought needed re lactating females, however capture may per se deter further attacks
- (10) **Other countries** - What's going on in other countries –something the aforementioned student could undertake as part of a PhD programme? Methodical search required – personal contacts needed. This work would be best focused on countries that do not allow lethal control.

[REDACTED]

From: [REDACTED]
Sent: 08 May 2017 10:56
To: [REDACTED]
Subject: FW: Draft Minutes and Actions from 8 Nov meeting on EPS licensing and aquaculture ADD use

From: [REDACTED]
Sent: 08 March 2017 20:43
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Draft Minutes and Actions from 8 Nov meeting on EPS licensing and aquaculture ADD use

[REDACTED]

Thank you for circulating the minutes of the above meeting. I apologise for the delay in this response.

Firstly, I would take the opportunity to inform you that we will be reviewing the EPS guidance this year to take account of new legal advice. We hope to have a draft version ready in the summer, which we will forward to SNH for review/comment. I will of course keep you updated on progress. We are unable, however, to provide you with the original legal advice that informed these changes.

The issues that you raise in the Annexes to the minutes are important and require careful consideration. Therefore we suggest that SNH submit formal statutory advice to Scottish Ministers on the impact of ADD use on cetaceans. This advice should be based on sound scientific evidence concerning the actual impacts of different ADDs on cetaceans. In light of the complexity of this issue, it is crucial that a sound scientific basis is provided for any decisions by Marine Scotland about ensuring compliance with legislation. I would be grateful if you could provide us with timescales for delivery of this key advice.

In respect of the issues around ADD impacts on cetaceans, Marine Scotland is concerned about some recent reports regarding issues with obtaining SNH approval to pursue research on new models of ADD that have reported less impact on cetaceans. You will realise that such devices if effective, have the potential to resolve or mitigate some of the concerns that you raise. It should therefore be a priority to proceed with this research as rapidly as possible in order to test these potential solutions. I am happy to provide further information on this, if required.

Please feel free to contact me if you wish to discuss this further.

Best wishes

[REDACTED]

[REDACTED]

Marine Scotland - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 31 January 2017 16:50
To: [REDACTED]

Further details are provided in Annex 1.5 European Protected Species which states:
"Cetaceans - Certain areas are more important to cetacean populations than others. The use of ADDs in these areas may cause disturbance. To allow assessment, further information on the use of the area by cetaceans may have to be gathered by the developer. SNH will assist where it can, but does not hold all cetacean information. SNH may advise the developer that a licence to disturb EPS (cetaceans) will be required from Marine Scotland in order to deploy ADDs at their farm. The licence process allows a proper assessment to be undertaken, and conditions potentially attached to any licences issued."

The Working Arrangements were developed in 2010, and will be updated as part of the work we are doing around the Aquaculture Consenting Review but this is still at an early stage.

Let me know if you have any questions.

[Redacted]

[Redacted] Marine Scotland | [Redacted]

From: [Redacted]
Sent: 03 November 2016 17:02
To: [Redacted]
Cc: [Redacted]
Subject: Agenda for 8 Nov meeting on EPS licensing and aquaculture ADD use

Hi all

With apologies for the delay, please see attached draft agenda and papers for our meeting at SNH Silvan House, Edinburgh, next Tuesday. Please let us know if you have anything else to add to the agenda or have any queries.

We look forward to seeing you next Tuesday.

Thanks [Redacted]

[Redacted]

[Redacted]

[Redacted]

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The an post-dealain seo agus fiosrachadh sam bith na chois dìomhair agus airson an neach no buidheann ainmichte a-mhàin. Mas a gair d' fhuair sibh an post-dealain seo le mearachd, cuiribh fios dhan manaidshear siostaim no neach-sgrìobhaidh.

Thoiribh an aire airson adhbharan gnòthaich, 's dòcha gur tèid sùil a chumail air puist dealanach/ tighinn a-steach agus a' dol a-mach bho ...

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The an post-d seo (agus faidhle neo ceanglaichean còmhla ris) dhan neach no luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith a' toirt a-steach còraichean, (pàrlachadh neo sgaoileadh) gur chread. Ma 's e a gair d' fhuair sibh seo le mearachd, bu chòir cur às dhan phost-d agus lethbhrìonn sam bith air an c-siostam againn, leig fios chun neach a sgaoil an post-d gur càil.

Dh' fhaodadh gum bi teachdaireachd sam bith bho Rìagnaltas na h-Alba air a chlàradh neo air a sgrìobhadh airson dearbhadh gu bhith an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh' fhaodadh nach eil beachdan agus a' phost-d seo co-ionann ri beachdan Rìagnaltas na h-Alba.

MINUTES - SNH / MS DISCUSSION ON ADDs AND EPS : Tue 8 November 2016

11.30 – 15.30. Silvan House meeting room 2, Edinburgh

Attendees:

SNH: [REDACTED]

MS: [REDACTED]

Apologies: [REDACTED] (t/c for part)
[REDACTED] (all MS).

Aims:

- To reach an agreed policy position on requirement for EPS licensing for use of ADDs in aquaculture.
- To discuss and agree approaches to monitoring and regulating the use of ADDs within the Inner Hebrides and the Minches cSAC.

1. Intro / context to ADD/EPS Issue

- [REDACTED] explained context and objectives for meeting, including summary of previous (April 2015) meeting and recent developments such as harbour porpoise cSAC and aquaculture consents review. [REDACTED] concluded that SNH recognises that it is for MS / SG to determine their approach on this issue, but that SNH requires a clear and formal policy statement that sets out the government position, especially where this seems to diverge from published guidance.
- [REDACTED] delivered short presentation, providing background and recent research on the issue of ADDs and aquaculture, including:
 - o Diversity of applications for ADDs
 - o Maps illustrating the range of audibility of ADDs in NW Scotland, and increasing persistent detection over last decade
 - o Areas within cSAC which recent studies have identified as being ensonified
 - o Ranges of audibility of differing ADDs.

2. EPS Legislation and MS Marine EPS Guidance

- [REDACTED] suggested it would help to re-visit the decision-making flowchart in the MS Marine EPS guidance and offered SNH's view on the likely responses to each question in turn:
 - o Q1 Are EPS likely to be present? => Yes.
 - o Q2 Are you planning an activity which could potentially cause injury or disturbance to marine EPS? => Yes (noting that the guidance itself indicates this, for ADDs).
 - o Q3 Can the impact be fully or partially mitigated? => potentially, there being various options here (eg see Annex 2). However, any such mitigation needs to be enforceable (eg via planning conditions) to ensure delivery.
 - o Q4. Will an offence be committed despite mitigation plans? Yes, in some cases – leading to requirement for EPS licence
- Q4 prompted [REDACTED] to outline recent legal advice received by MS on the definition of 'reckless'. The advice received was not definitive but, in case law, implied 'culpable indifference and blameless disregard'. Examples of recklessness in a driving context were also given. It was MS's opinion, on the basis of this advice that ADD use by the aquaculture sector, is not 'reckless', the intention of ADD use being different for aquaculture to that for other industries where ADDs may be applied to 'deliberately' scare / disturb EPS (cetaceans).

- MS considered that, unless there was an identified negative effect of ADDs used in aquaculture upon EPS species, and that operators had been made aware of the negative consequences of their actions, potentially via guidance which informed operators that what they were doing could disturb cetaceans, and provided them with routes by which they might avoid this, it would be difficult to infer recklessness.
- Further to this, [REDACTED] argued that since ADD use for aquaculture was (in MS opinion) not, by this token, reckless and not therefore a criminal offence, there was no basis for introducing an EPS licensing regime. Rather, regulators should promote good practice to help achieve safeguard of EPS.
- SNH questioned this interpretation, indicating that the objective of the EPS legislation was to minimise or avoid disturbance and harm to protected species and, given our understanding of the potential risks to cetaceans from exposure to certain levels of underwater noise, that a reasonable interpretation of the legislation and accompanying guidance would conclude that disturbance through ADD use (irrespective of the sector employing it) falls within its scope. SNH further queried the interpretation of 'reckless / deliberate' for use of ADDs, where there has been widespread discussion with industry on potential risks to EPS, such that an operator would be 'aware of the likelihood that disturbance would result from his actions...'
- **Action 1. MS ([REDACTED] or [REDACTED]).** To provide SNH with a copy of the legal question raised by MS and the advice received from lawyers on defining reckless behaviour and written confirmation of how MS interpret that advice (as set out in the meeting). Also in relation to Reg 39 (2) issue raised later.
- **Action 2. SNH ([REDACTED]).** To investigate the potential for SNH to obtain a separate legal opinion on defining 'reckless / deliberate behaviour' (in the context of the EPS) and perhaps also in relation to Reg 39 (2), noting that SNH lawyers may not wish to offer advice on the same question asked by MS.
- [REDACTED] & [REDACTED] indicated that legal advice received on the definition of 'reckless' within the MS Marine EPS Guidance would, need to be fully considered.
- **Action 3. MS ([REDACTED] or [REDACTED])** to advise SNH of plans / timescales for guidance revision. [REDACTED] As when first drafted, SNH will be keen to support MS in any re-drafting required.
- [REDACTED] emphasised that, given the implications for shooting seals and the balance of seal control and aquatic animal welfare, there is a need to understand the 'end game' and asked SNH what they sought to achieve through an EPS licensing process for ADDs. MS expressed concern at introducing an administrative process, without clear understanding of the effects of ADDs on EPS and what positive outcomes are expected, against a backdrop of reducing the administration of other aspects of fish farming control.
- [REDACTED] (and others) outlined three objectives:
 - Securing a mechanism for monitoring and managing the use of ADDs, so as to safeguard EPS (and especially HP within the cSAC) in the face of growing use of ADDs, increasing scientific evidence of their potential to cause disturbance and a growing aquaculture industry;
 - Reducing or preventing the risk of legal challenge / infraction of MS, in relation to non-delivery of its statutory functions, under the Habitats Regulations (insofar as they apply to EPS) and noting high levels of public/ NGO scrutiny on such issues;

- o Consistency with other industries in Scotland that are using or planning to use ADDs.

3. Practical Measures for Regulating and Managing ADD Use

- continued her presentation, focusing on the cSAC, and covering:
 - o Details of ADD use supplied by fish-farmers
 - o Sound propagation models
 - o Modelled maps of ADD sound propagation and potential zones of disturbance to HP around relevant fish-farms, and the caveats that apply to their interpretation
- outlined initial discussions with industry on best practice use of ADDs within the cSAC, including managing the:
 - o Frequency of devices (use those to which HP / other cetaceans are less sensitive)
 - o Duration of disturbance (ensure no continuous noise emission / use automatically triggered devices and limit duration of use)
 - o Zone of disturbance (use devices with reduced range of noise output)
- observed that recent research by SMRU, around salmon netting stations in NE Scotland, indicated that triggered use of ADDs was less effective than constant use, in terms of seal deterrence. The seals appeared to be more willing to tolerate the triggered ADD output in the knowledge that a potential food source is available (which they would, under constant ADD use, have been unaware of).
- observed that, in relation to fish-farm management we (collectively) are trying to manage a range of competing impacts, namely: escaped fish, shot seals and disturbed cetaceans. By changing the approach we take to management of any one of these (eg cetacean disturbance) we risk increasing other, undesirable impacts. emphasised that improved management may be better delivered through guidance than a legislative approach.
- suggested that, as the cSAC has policy protection, measures to protect the qualifying species would need to be enforceable, and hence the need for a legislative approach (whether that be via EPS legislation, planning legislation or another mechanism). **Action 4. SNH** to confirm with
- noted that Scottish Govt is strongly advocating the streamlining of aquaculture regulation and that any introduction of a new licensing regime (irrespective of the justification or otherwise for that) would be inconsistent with this. also indicated that any new EPS licensing regime would be a huge administrative burden for MSLOT and effectively undeliverable with current resources.
- In response, and others outlined various options for reducing this burden, based in part on advice received previously by (SNH Licensing Mgr). An effective licensing regime could, in SNH's view, be introduced that would not be onerous on MS or developers. Options covered included:
 - o **Introducing EPS process for all aquaculture ADDs**
 - Introduce a 'class licence' which permits use of ADDs in less sensitive locations, subject to registering devices with regulator and providing certain information (such as model, location, whether or not linked to triggering mechanism etc). Operation may be permitted without restrictions or subject to general terms and conditions applicable to all devices covered by the Licence

- In sensitive locations, require a site-specific licence which sets out site-specific mitigation to be conditioned
- **Using planning conditions as first stage mitigation**
 - Condition 'best practice' mitigation at all sites through planning (likely to be through an Environmental Management Plan).
 - Any breach of these conditions would breach planning consent but could also be considered reckless disturbance and a potential offence, leading to requirement for an EPS licence.
 - For sensitive locations, 'best practice' mitigation may not be sufficient and so additional mitigation may be required (potentially including no ADDs without an EPS license or that use of ADDs would be inappropriate in certain locations).
- The pros and cons of these and other options for managing ADD use, whether via EPS or development management under the planning system, were discussed. [redacted] emphasised that planning legislation can't be used to address and manage impacts covered under other regulatory regimes (such as EPS legislation). A view on whether ADD use for aquaculture is encompassed by the EPS legislation, or not, is therefore a prerequisite before options for control via the planning system are investigated. [redacted] later also advised that if management via the planning system is considered the most appropriate mechanism for addressing this issue then any subsequent discussions need to involve LA representatives.
- [redacted] asked MS whether they shared the SNH view that this (ADD use by the aquaculture industry) was an issue that needed to be addressed and managed. Without agreement on that, the discussion and identification of a practical option for managing ADD use was premature.
- MS ([redacted]) were less certain that there is an outstanding concern, at this time, which can't be managed under current working practices. NB. [redacted] later offered the view that EPS licensing of ADD use by aquaculture was appropriate in some circumstances.
- **Action 5. MS (Policy and LOT)** to confirm whether, in their opinion, the concerns raised by SNH regarding ADD use, by the aquaculture industry, inside and outwith the cSAC, require to be addressed and whether they justify changes to current regulatory practices.

4. Additional Perspective from MS Policy & Concluding Remarks

- [redacted] joined the meeting by t/c. [redacted] has led on the EPS guidance within MS Policy, and [redacted] indicated that she would be best placed to advise on the issues being covered by the meeting, on her return, but in summary:
 - He did not believe there was a significant policy issue at the moment regarding ADD use. In his experience, SNH advise when they have concerns about a particular deployment and MSLOT respond accordingly, generally in accord with SNH advice
 - The introduction of the HP cSAC did not change that position.
 - The Marine EPS Guidance would need to be updated, in relation to its description of Reg 39(2).
- SNH noted that the wording of section 1.2.3 of the Guidance is confusing as it brings in EPS test 3 (would actions be detrimental to FCS of species) as a potential defence against an offence being committed (and therefore whether an

EPS licence is needed?). SNH interpretation of the Regulations section 44 (3) is that the FCS test is considered later in the process, when determining whether to grant an EPS licence. This is in line with the flowchart in the current EPS Guidance.

- **Action 6. MS** () to clarify advice received on Reg 39(2) and implications for need to revise the marine EPS Guidance
- **Action 7. SNH** (). To compile a list of questions for MS and also to include, for further discussion, our initial views on possible approaches that could be implemented (whether via EPS legislation or otherwise) to address the concerns we are raising. See Annexes 1 and 2.
- SNH emphasised the opinion that ADD use by the aquaculture industry, and the associated EPS licensing issues, is an issue of growing concern, that needs to be addressed to ensure safeguard of HP and compliance with European legislation.
- **Action 8. MS** To provide a timetable to SNH for addressing the points raised at today's meeting.


8 December 2016.

Annex 1. Actions / questions for Marine Scotland in relation to ADD use by the aquaculture sector.

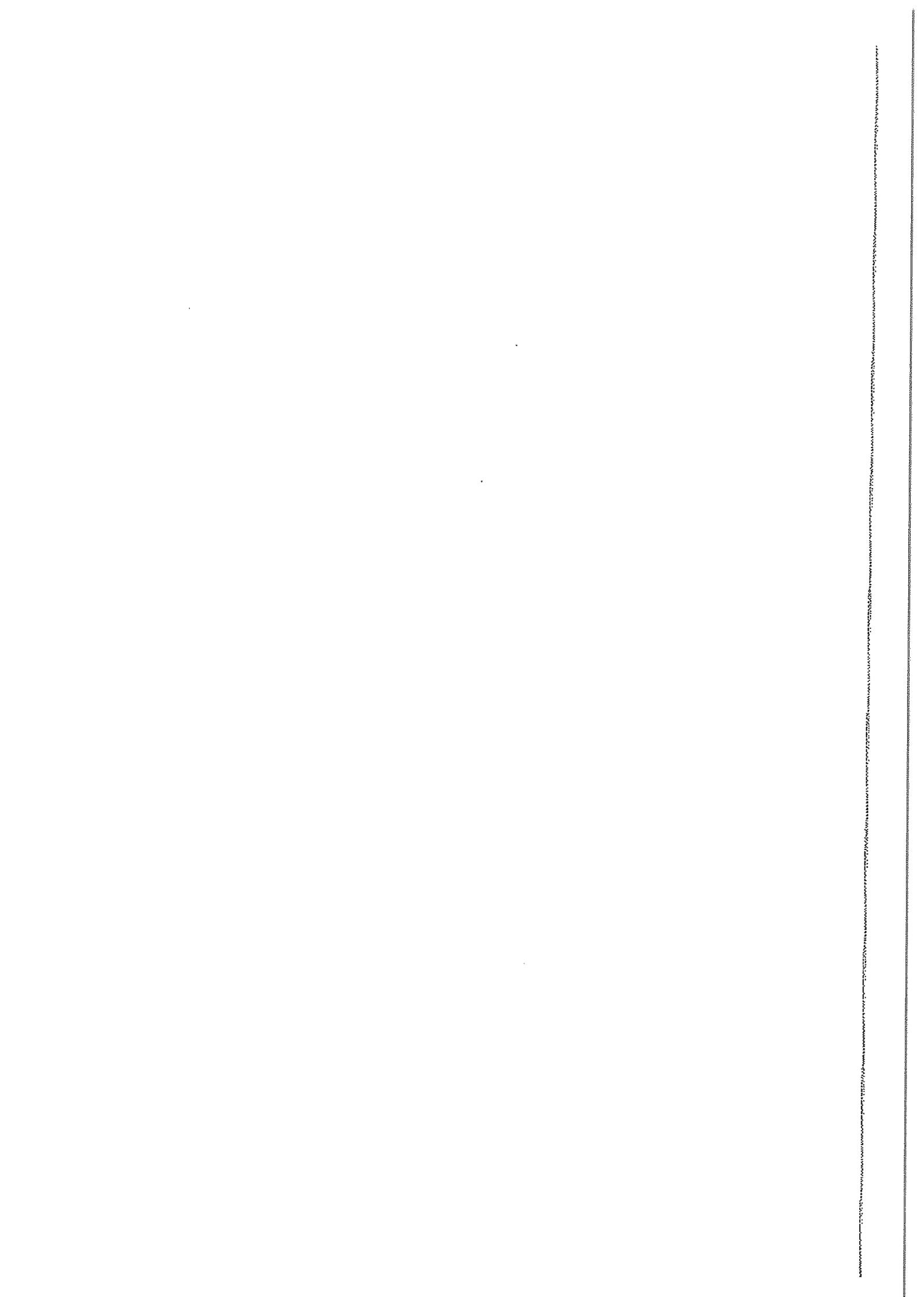
1. MS to provide SNH with a copy of the legal question posed and the advice received from lawyers on defining reckless behaviour (and on Reg 39 (2)) and provide written confirmation of how MS interpret that advice (Actions 1 and 6).
2. The aquaculture industry widely acknowledges that ADDs can impact cetaceans. Our understanding is that the legal advice received by MS regarding the definition of reckless is 'culpable indifference and blameless disregard'. Does MS conclude that an ADD left on continuously throughout the production cycle, with no mitigation, and given common understanding of potential risk to cetaceans, is not a reckless action which could result in the disturbance of cetaceans? If so then what is the justification for this conclusion?
3. MS to clarify which parts of the Marine EPS guidance they intend to update e.g. the definition of reckless and/ or description of Reg 39(2); and set out timescales / process for this revision (Action 3).
4. In areas of higher cumulative pressure it seems logical that there is an increased risk to cetacean species. In some areas this could theoretically result in their exclusion from significant areas for significant periods of time. Do MS agree this is a reasonable conclusion and if so what are the implications in relation to Regulation 39 (and within the HP cSAC, the ability to achieve Conservation Objectives on avoiding significant disturbance and maintaining access to all parts of the cSAC)?
5. Does MS consider that the concerns raised by SNH regarding ADD use for aquaculture inside and outwith the cSAC, require to be addressed? If not, what is the basis for that decision? If so, does this justify changes to current regulatory practices and do the options in annex 2 merit further consideration? Can MS clarify their timescale for providing a clear and formal policy statement that sets out the government position (Action 5 and 8)

Annex 2. Potential approaches for addressing concerns about impact of ADD use on cetaceans and ensuring compliance with legislative requirements.

- **Options for EPS licensing for all aquaculture ADDs:**
 - Introduce a 'general licence' which permits the use of ADDs in less sensitive locations, provided that they comply with general mitigation conditions (e.g. advertised on website and promoted to industry). Note that this approach does not require any application process and therefore no information on devices is submitted, which would make future monitoring of cumulative impacts more difficult. An offence is still committed if non-compliance with conditions can be demonstrated.
 - Introduce a 'class licence' which permits use of ADDs in less sensitive locations, subject to registering devices with regulator and providing certain information (such as model, location, whether or not linked to triggering mechanism etc). Operation is permitted subject to general terms and conditions applicable to all devices covered by the Licence. An offence is committed if these conditions are not complied with. This approach may provide a good trade-off between provision of information and potential for compliance monitoring via a light-touch and simple approach to licensing process.
 - Individual EPS licence may still be required for sensitive / higher risk locations, with specific mitigation conditions attached to the licence.
- **Using planning conditions as first stage mitigation**
 - Condition 'best practice' mitigation at all sites through planning (likely to be through an Environmental Management Plan).
 - Any breach of these conditions would breach planning consent (enforcement action?) but could also be considered reckless disturbance and a potential offence, leading to requirement for an EPS licence?
 - For sensitive locations, 'best practice' mitigation may not be sufficient and so additional mitigation may be required (potentially including no ADDs without an EPS licence or that use of ADDs would be inappropriate in certain locations).
 - Issues with this approach are that it is not deemed competent for planning conditions to cover matters that are dealt with under other legislation, and LA may be reluctant to condition issues over which they have little control / experience. This approach could only be applied gradually as sites apply for planning consent for other aspects, so would mean a piecemeal approach to managing ADDs and difficulties in monitoring and managing any cumulative issues.

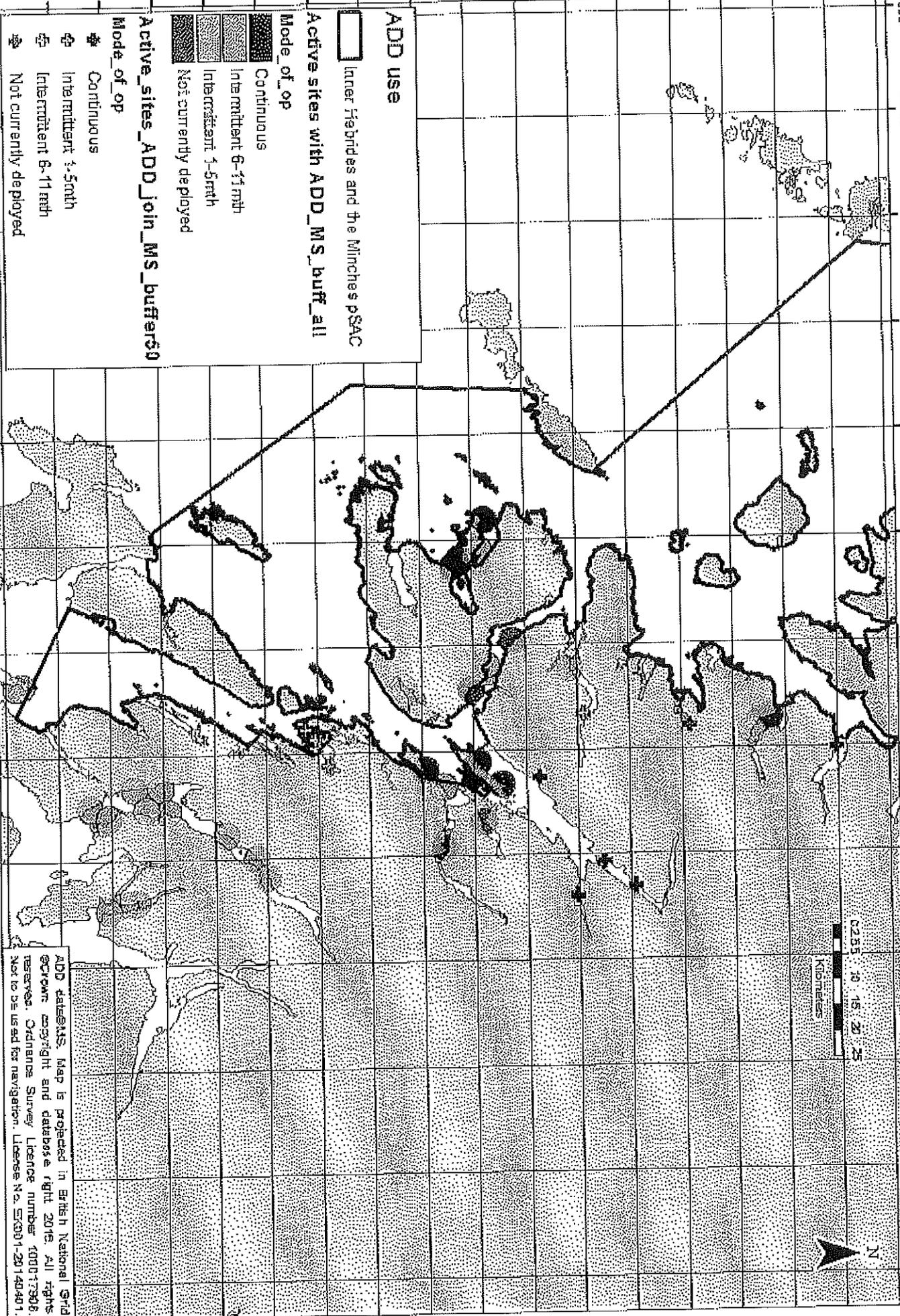
Potential mitigation conditions (currently under discussion with industry):

- No continuous use of ADDs at any site.
- Use of automatic triggered devices (with some guidance on frequency / duration of triggering)
- Use of low frequency devices
- Reporting requirements (to be agreed)
- Use of strategic area-wide approach to ADD deployment?
- Seasonal restrictions on ADD use?
- Consideration of cumulative impacts and possible further restriction / no ADD use in areas of highest risk (NB Further work and discussion is required to clarify the location of such areas and the basis for their identification).



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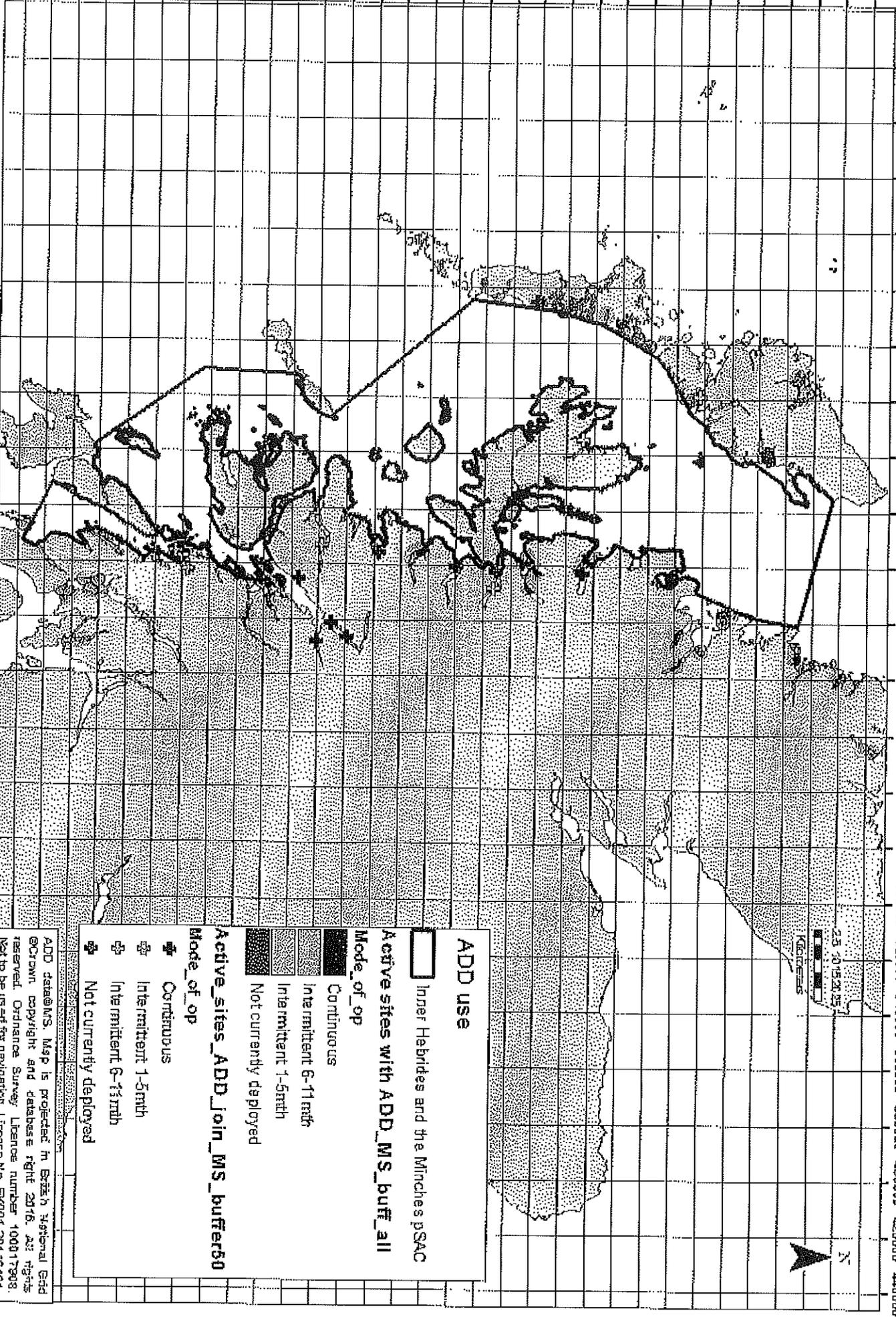
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ADD use

Inner Hebrides and the Minches pSAC

Active sites with ADD_MS_buff_all

Mode_of_op

- Continuous
- Intermittent 6-11 mth
- Intermittent 1-5mth
- Not currently deployed

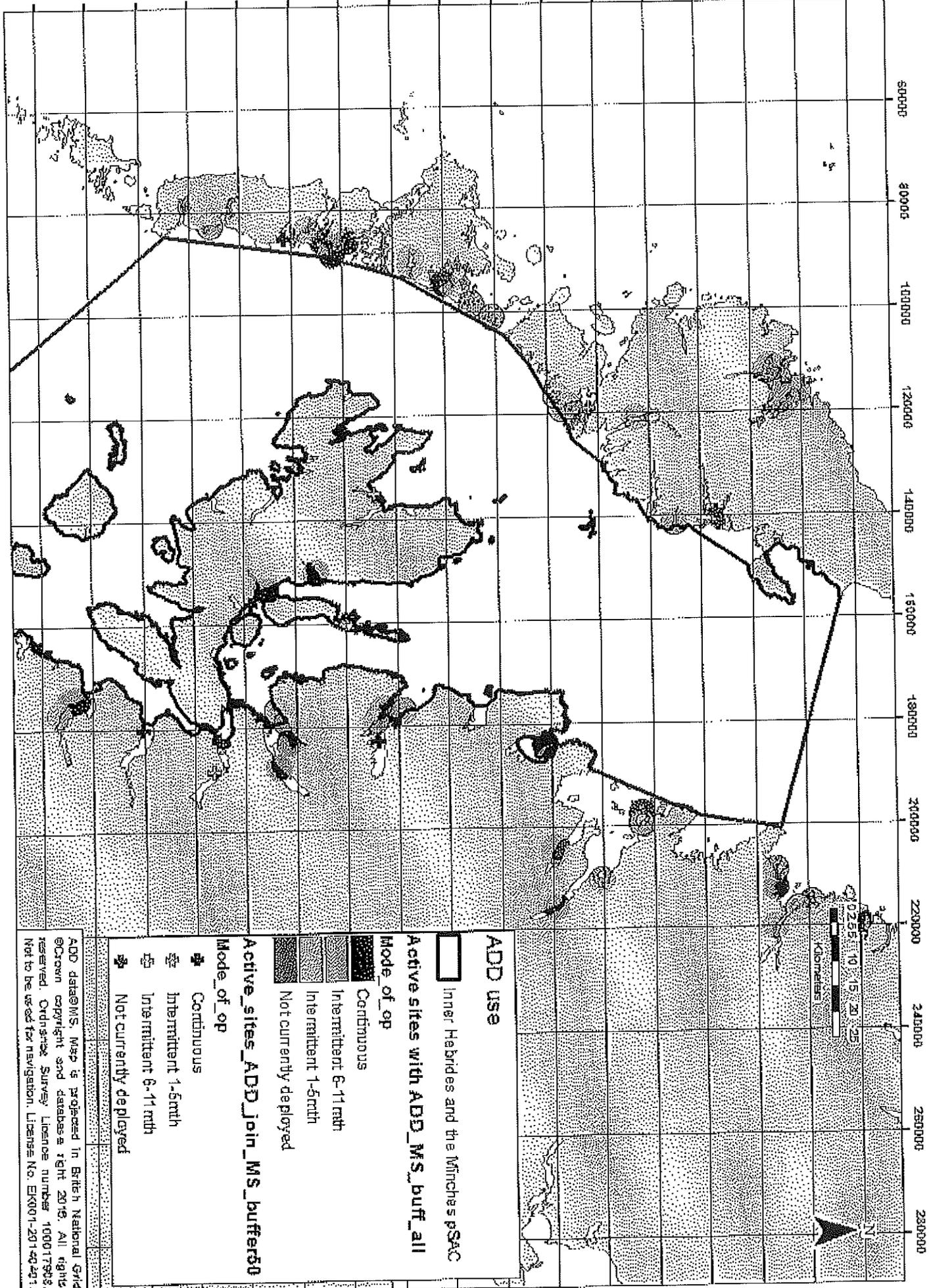
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Mode_of_op

- Continuous
- Intermittent 1-5mth
- Intermittent 6-11 mth
- Not currently deployed

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KILOMETRES

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ADD use

Inner Hebrides and the Minches PSAC

Active sites with ADD_MS_buff_all

Mode_of_op

- Continuous
- Intermittent 6-11 mth
- Intermittent 1-5 mth
- Not currently deployed

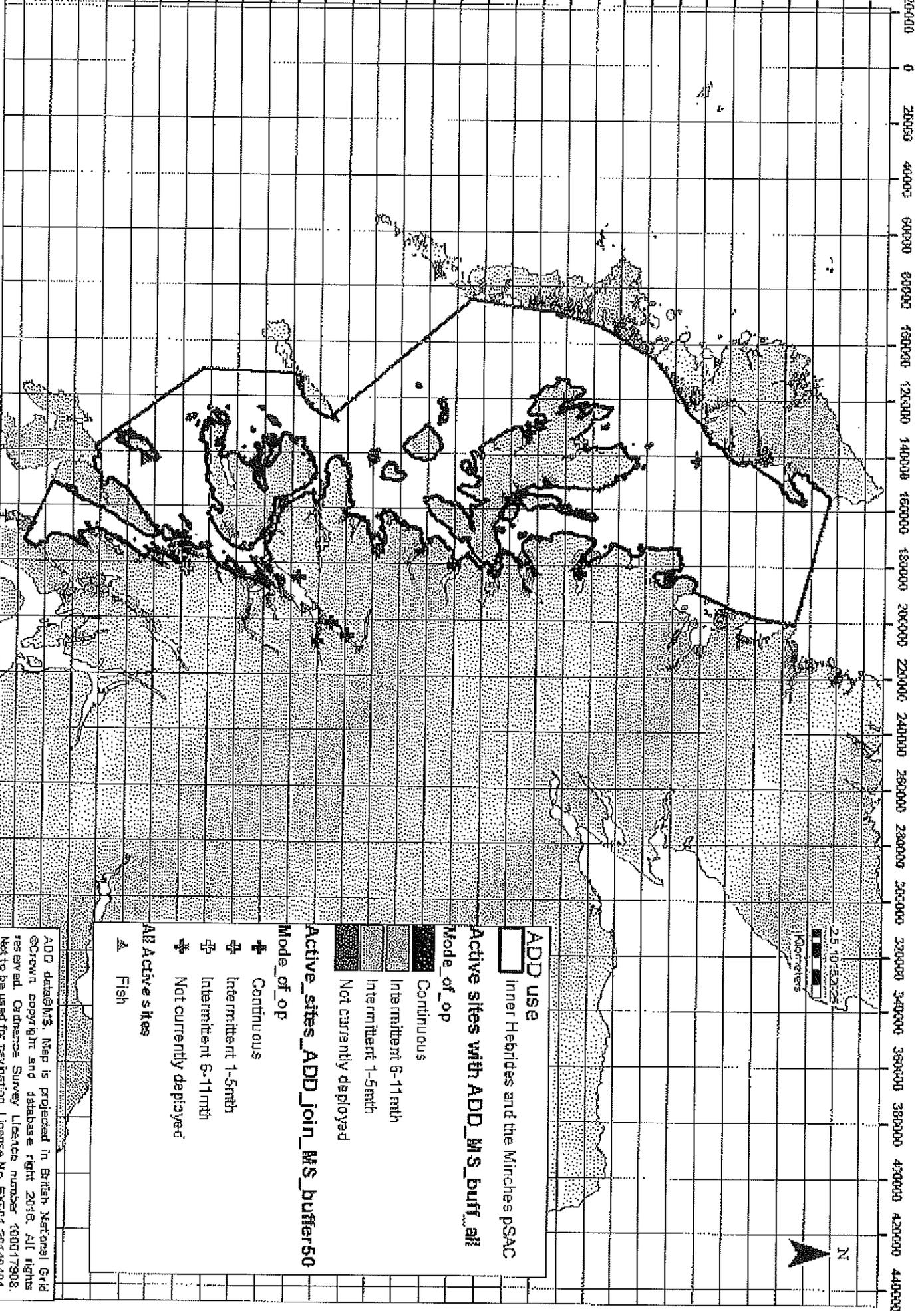
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Mode_of_op

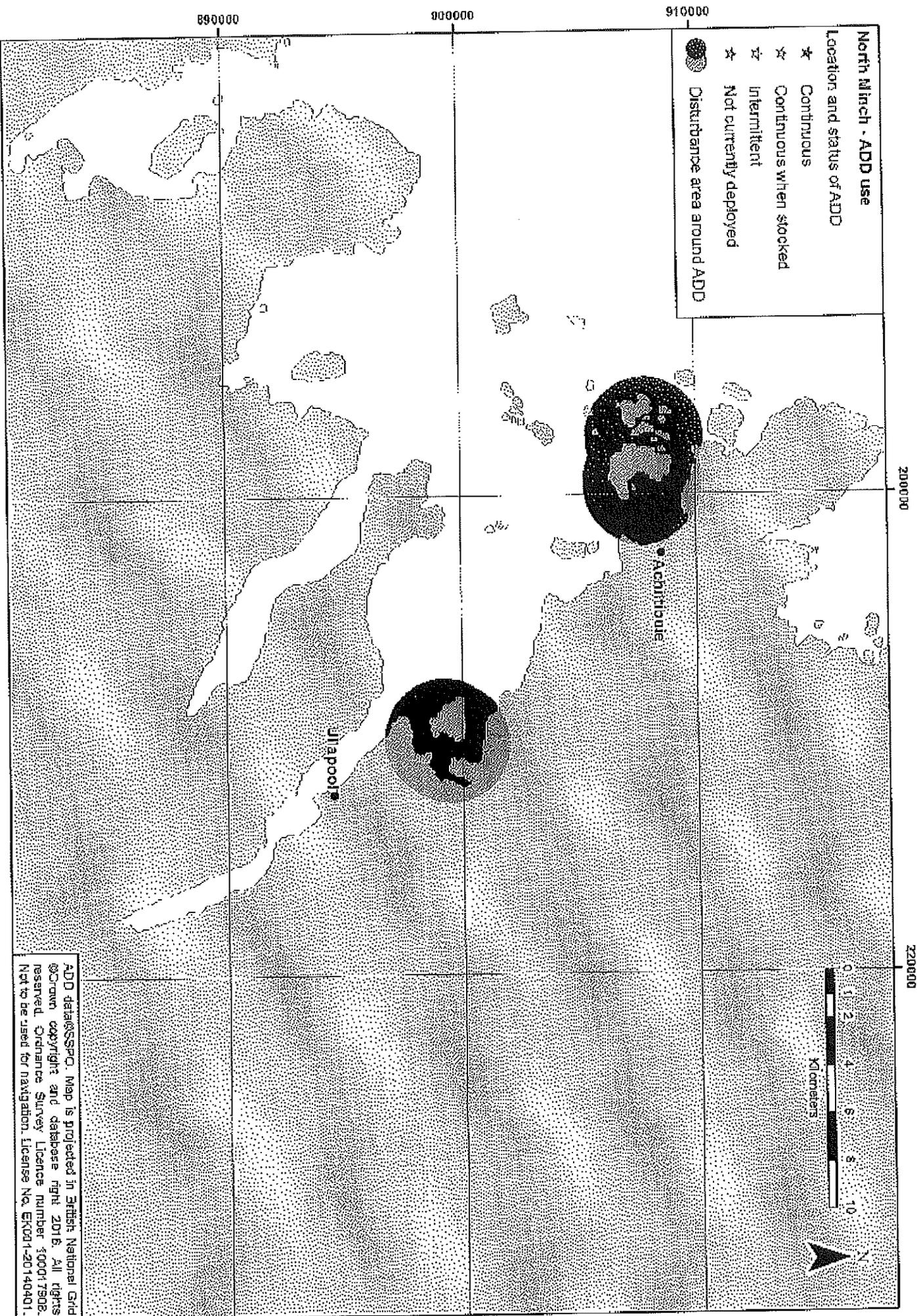
- Continuous
- Intermittent 1-5 mth
- Intermittent 6-11 mth
- Not currently deployed

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North Minch - ADD use
 Location and status of ADD

- ★ Continuous
- ★ Continuous when stocked
- ★ Intermittent
- ★ Not currently deployed
- Disturbance area around ADD

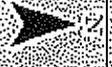
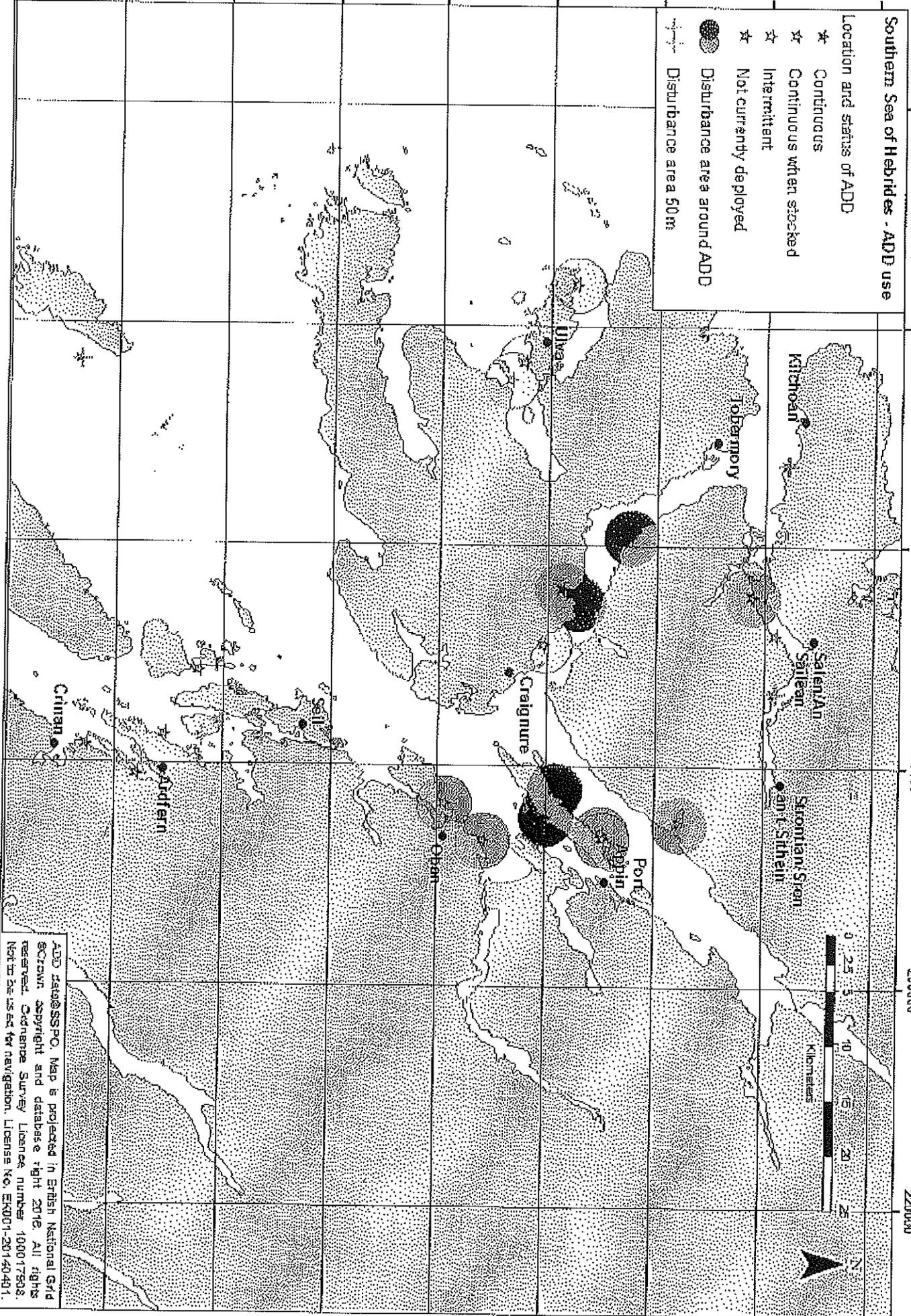
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120000 140000 150000 160000 180000 200000 220000

Southern Sea of Hebrides - ADD use

- Location and status of ADD
- ★ Continuous
 - ☆ Continuous when stocked
 - ☆ Intermittent
 - ☆ Not currently deployed
- Disturbance area around ADD
- Disturbance area 50m



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[REDACTED]

From: [REDACTED]
Sent: 10 May 2017 16:01
To: [REDACTED]
Subject: FW: Seals, deterrents and porpoises

From: [REDACTED]
Sent: 06 February 2017 16:13
To: [REDACTED]
Subject: Seals, deterrents and porpoises

Dear [REDACTED] – I wonder if you would have a minute some time soon to speak to me about some work we are trying to do in Orkney?

We are in touch with Scottish Sea Farms and we want to run a test on the new Ace Aquatec porpoise friendly seals scarer at their sites in Orkney. They have two sites in mind - Wyre and Toyness – but the latter is the one with the ongoing seal problem and would be best to test the device for other reasons too (level of current seal damage and power supply). We have quoted them for doing some work on both sites simultaneously to see how it affects porpoises (hopefully not at all as it is low frequency) and whether it stops seal attacks (if not it would be pointless to use it).

Colleagues obtained a licence to test a different porpoise friendly device ([REDACTED] startle device) at these two sites a couple of years ago. We have now applied for an ESP licence for testing the device at the two sites. We were informed by SNH licencing:

"You will note that this licence only covers the proposed works at Wyre Fish Farm and not Toyness although this is something that could be reconsidered for future licences on review of findings/outcomes of your work at the Wyre site.

The licence you mentioned that is currently active (34448) includes the Toyness site due to an error, on SNH's behalf, as the site was added to the licence later, as an amendment, that was not first approved by the relevant species specialists. Licence 34448 could not be used for your current study as this was not in the original project proposal that was submitted when the licence was applied for and assessed/approved and, referred to in Condition 2 of the licence."

I wonder if we would be allowed to speak to the species specialists mentioned about this? (I also wonder, if the explanation above is correct, why the licence was not revoked immediately...)

If we have to work on the one site first to prove the device does not deter porpoises in order to apply for a licence to do a similar trial at the second site – this will extend the workplan considerably and will exceed the budget we have drawn up. It leaves us in a bit of a pickle.

So it would be good to get clear where SNH is coming from regarding Toyness – and if there are any ways we could ameliorate our proposed work there so as to enable us to do the work there.

Alternatively – if Toyness is really impossible for some reason, is there any chance SNH may have a small amount of funding to help with this (<10k) to turn this into a two stage process as suggested above.

I think this could be an important piece of work for the whole ADD / fish farm issue – which is why I am bothering you with this.

Best wishes

