

1.2 Regulatory and Policy Context

1.2.1 Introduction

- 1.2.1.1 Under the provisions of the Energy Act 2004, operation of an offshore transmission system became a licensable activity. In keeping with EC unbundling legislation, it is not permissible for a generator to transmit power over transmission lines other than in very limited circumstances for the purposes of commissioning and over a time limited maximum 18 month period. The consequence of this is that the owners and operators of the offshore wind farms cannot retain operational control of any OFTO assets. It is, however, permissible for the generator to construct and install OFTO assets prior to the assets becoming operational. Exercising such a choice is deemed as the generator build option.
- 1.2.1.2 At the time when the Section 36 consents for the offshore generating stations (OGS) were applied for there was no single consent which provided permission to construct infrastructure which spans offshore and onshore terrain in Scotland. Recent changes to legislation which allow applicants for Section 36 consents for generating stations offshore to apply for “deemed planning” permission as part of the Section 36 consent application do not apply retrospectively and are therefore not applicable to the MORL TI. The construction of onshore (i.e. above mean low water springs) ancillary infrastructure requires consent under The Town and Country Planning (Scotland) Act 1997. This consent will be applied for as separate Town & Country Planning applications to be submitted to Aberdeenshire Council as the relevant Local Planning Authority.

1.2.2 The Town and Country Planning (Scotland) Act 1997

- 1.2.2.1 An Application under the Town & Country Planning (Scotland) Act 1997 for planning permission in principle will be submitted to Aberdeenshire Council, as the local planning authority, for the OnTI works. This will comprise one application for the modified export cable landfall, the modified onshore cable route corridor, the MORL substation and the regional transmission owner (TO) substation.
- 1.2.2.2 There are a number of relevant national planning policy and guidance documents in Scotland consisting of National Planning Framework (NPF), Scottish Planning Policy (SPP), Planning Advice Notes (PANs) and Planning Circulars. These policies are further supported by Statutory Development Plans which comprise Strategic Development Plans and Local Development Plans.
- 1.2.2.3 The Aberdeenshire and City Strategic Development Plan (Aberdeen City Council & Aberdeenshire Council, approved 2014) and the Aberdeenshire Local Development Plan (Aberdeenshire Council, adopted 2012) will also apply to this development as the entire proposed onshore works will lie within Aberdeenshire Council (Northeast area). Section 25 of the 1997 Act provides that determinations must be made in accordance with these development plans unless material considerations indicate otherwise. Both plans support the principle of renewable energy developments provided they comply with the provisions of local planning policy.
- 1.2.2.4 The applications are accompanied by a Updated Planning Statement which updates the Planning Statement submitted in support of the applications for the Project in August 2012. It sets out the detailed planning policies applicable to the modified TI and provides a planning assessment of the modified TI based on national and local planning policy.

1.2.3 *Marine (Scotland) Act 2010 and The Marine and Coastal Access Act 2009*

1.2.3.1 A Marine Licence will be sought by MORL for the development of the offshore substations and offshore export cables in terms of Part 4 of the Marine and Coastal Access Act 2009 (to the extent the modified TI is located in the Scottish offshore region i.e. 12 to 200 nm) and Part 4 of the Marine (Scotland) Act 2010 (in respect of those elements of the modified OfTI located within Scottish inshore region (i.e. between 0-12 nm).

1.2.4 *Requirement for An Environmental Impact Assessment (EIA)*

1.2.4.1 In terms of EC Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended) and now codified in Directive 2011/92/EU (the EIA Directive) certain developments must be subject to EIA. The purpose of the Directive is to ensure that, in considering whether to grant consents for developments that are likely to have significant environmental effects, the consenting authorities have all the necessary environmental information on which to base their decision.

1.2.4.2 Under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, the onshore substations are classified as Schedule 2 development (given the development area) and therefore require an EIA. MORL has elected to include the export cables (onshore and offshore) and OSPs in the EIA as they form an integral part of the modified TI and therefore are a part of EIA development.

1.2.4.3 There is a requirement to consider cumulative and in-combination effects as part of the EIA process. Projects to be included in such an assessment must include existing projects and those currently in the planning system. Projects to be included in such an assessment must include not only other potential renewable energy projects, but also other types of project taking place in the marine/coastal and terrestrial environment.

1.2.5 *Scotland's National Marine Plan Consultation Draft (2013)*

1.2.5.1 The National Marine Plan (Consultation Draft) is applicable to both Scottish inshore waters (out to 12 nautical miles) and offshore waters (12 to 200 nautical miles). The National Marine Plan (NMP) provides a number of general marine policies that apply to all marine development proposals as well as providing a number of sectoral marine policies, relating to specific development sectors such as renewable energy.

1.2.5.2 The NMP sets out a number of overarching objectives that apply to all developments within the marine environment. The objectives are set out under the following headings within the plan:

- Achieving a sustainable marine economy;
- Ensuring a strong, healthy and just society;
- Living within environmental limits;
- Promoting good governance;
- Using sound science responsibly; and
- EU Marine Strategy Framework Directive good environmental status descriptors.

- 1.2.5.3 The overarching objectives, strategic objectives and general policies of the NMP set the context for the sector specific policies and guidance within the plan. In terms of renewable energy, the NMP provides its sector specific offshore renewable energy policies in Chapter 11.

1.2.6 *The Crown Estate Act 1961 and The Energy Act 2004*

- 1.2.6.1 The Crown Estate Commissioners are the owner of the foreshore and the seabed below the territorial seas of the UK under the Crown Estate Act 1961 and are the party entitled to exercise the right to exploit areas outside the territorial seas for the production of energy from water or winds within the areas designated under the Renewable Energy Zone (Designation of Area) Order 2004. The Commissioners require a lease of the seabed and foreshore within the territorial seas or a lease of rights of the areas outside the territorial seas to be granted for developments on the marine estate, including cable laying and construction of the offshore substation. The Agreements for Lease provide for the grant of a Lease after the Key Project Consents are obtained. This is a statutory consent granted in the form of a lease.

1.2.7 *Habitats Directive (Directive 92/43/ECC) and Wild Birds Directive (Directive 2009/147/EC):*

Requirement for Appropriate Assessment

- 1.2.7.1 The Habitats Directive provides for the conservation of natural habitats and of wild flora and fauna including in offshore areas. The Wild Birds Directive applies to the conservation of all species of naturally occurring wild birds including in offshore areas. The Directives have been transposed into Scottish Law by the Conservation (Natural Habitats &c) Regulations 1994 (as amended) (Habitat Regulations), the Wildlife and Countryside Act 1981 (in relation to birds), and in relation to the offshore marine area, by the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007 (as amended) (Offshore Habitats Regulations). The Regulations require a Habitats Regulation Assessment (HRA) to be conducted by the 'competent authority' before a plan or project that is likely to have a significant effect on the integrity of designated Special Protection Areas (SPA) or Special Areas of Conservation (SAC), can be given consent, permission or other authorisation. The UK SACs and SPAs form the Natura 2000 network, which is at the core of the Habitats and Birds Directives. Scottish Government Policy extends the protection afforded to SACs and SPAs to proposed SACs (pSAC) and proposed SPAs (pSPA).

European Protected Species

- 1.2.7.2 Annex IV of the Habitats Directive lists certain animal and plant species of European Community interest which are in need of strict protection. Any of these species whose natural range includes any area in Great Britain are called 'European Protected Species' and are afforded protection under the Habitats Regulations and/or the Offshore Habitats Regulations. Their places of shelter are fully protected and it is an offence to damage, destroy or obstruct access to or otherwise deny the animal use of a breeding or resting site, whether deliberately or not. It is also an offence to disturb in a manner that is, or in circumstances which are likely to significantly affect the local distribution or abundance of the species, disturb in a manner or circumstances which are likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.

1.2.7.3 Licences may be given authorising activities affecting European Protected Species of plants or animals which would otherwise be illegal under the Regulations. The licences are granted by Scottish Natural Heritage (SNH) or Marine Scotland depending on the reason for the licence application.

1.2.8 *The Wildlife and Countryside Act 1981 and the Nature Conservation (Scotland) Act 2004*

1.2.8.1 The Wildlife and Countryside Act 1981 (as amended) (the 1981 Act) is designed to protect wildlife in the UK. The Nature Conservation (Scotland) Act 2004 (the 2004 Act) is the principal law by virtue of which wildlife is protected in Scotland. Provisions of both Acts tend to overlap as the 1981 Act also offers wildlife protection in Scotland. All species of wild birds are afforded protection under the Acts. Furthermore, Chapter 1 of Part 2, and Schedules 1 and 5, of the 2004 Act provide for the enhanced protection and management of SSSIs, requiring the preparation of site management statements and amending notification procedures. The provisions place a duty on public bodies for the further conservation and enhancement of SSSIs, providing a new offence whereby third parties can be convicted for damaging SSSIs and enable the making of byelaws for the protection of SSSIs. The 2004 Act repeals the SSSI provisions of the 1981 Act.

1.2.9 *Protection of Badgers Act 1992*

1.2.9.1 The Protection of Badgers Act 1992, (as amended), makes it an offence to recklessly take, injure or kill a badger, or destroy or cause disturbance to its sett. Any sett within an active badger territory is afforded legal protection, regardless of when it may have last been used. In addition, badgers are afforded protection from cruel ill-treatment, which includes preventing a badger access to its sett, as well as causing the loss of significant foraging resources within a badger territory.

1.2.10 *Wildlife and Natural Environment (Scotland) Act 2011*

1.2.10.1 Following the introduction of the Wildlife and Natural Environment (Scotland) Act 2011 (WANE), Scottish Ministers have delegated the majority of their species licensing powers to SNH. Scottish Ministers delegated all existing licensing powers under the Wildlife and Countryside Act 1981, Protection of Badgers Act 1992 and Habitats Regulations to SNH, though there are exceptions in certain areas where Scottish Ministers have retained their licensing powers in respect of cetaceans (whales, dolphins and porpoises). WANE modernises outdated legislation and corrects anomalies and weaknesses in current legislation. It is focused on countryside management (e.g. modernising game law and strengthening protection of badgers), but also changes the licensing system for protected species, regulates the control of invasive non-native species, and makes operational changes to the management of SSSIs.

1.2.11 *Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003*

1.2.11.1 Consideration is required to be given to the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. The Act offers protection to salmon and sea trout.

1.2.12 Protection of Seals Under The Marine (Scotland) Act 2010

- 1.2.12.1 On the 1st February 2011, it became an offence to kill, injure or take a seal at any time of year, except to alleviate suffering or where a licence has been issued to do so by Marine Scotland under Part 6 of the Marine (Scotland) Act 2010. The method of killing or taking seals is detailed in the licence issued and regular reporting is required.

1.2.13 Marine Strategy Framework Directive (Directive 2008/56/EC)

- 1.2.13.1 The Marine Strategy Framework Directive 2008/56/EC (MSFD) aims to achieve Good Environmental Status in Europe's seas by 2020. Good Environmental Status involves protecting the marine environment, preventing its deterioration and restoring it where practical, while using marine resources sustainably. This fits well with the UK's vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas'. The MSFD sets out 11 high level Descriptors of Good Environmental Status which cover all the key aspects of the marine ecosystem and all the main human pressures on them.
- 1.2.13.2 It is inextricably linked to the Water Framework Directive 2000 / 60 / EC (WFD). WFD relates to improving and protecting the chemical and biological status of surface waters throughout a river basin catchment from rivers, lakes and groundwater through to estuaries (transitional) and coastal waters to one nautical mile out to sea (three nautical miles in Scotland) and overlaps with MSFD in coastal waters.

1.2.14 Water Environment and Water Services (Scotland) Act 2003

- 1.2.14.1 Under the Water Environment and Water Services (Scotland) Act 2003 river basin management plans must be produced and implemented. River basins include all estuaries and coastal waters extending to 3 nm seaward from territorial waters. Any proposed development within 3 nm must have regard to the requirements of the WFD to ensure that all surface waters achieve Good Ecological Status and that there is no deterioration in status.

1.2.15 Land Reform (Scotland) Act 2003

- 1.2.15.1 The Land Reform (Scotland) Act 2003 established statutory rights of responsible access to land and inland water for outdoor recreation, crossing land and water and for some educational and commercial purposes (also known as Scottish access rights).

1.2.16 Other Consents Required

- 1.2.16.1 The generating stations have already been consented under Section 36 of the Electricity Act 1989. Marine Licences for the Telford, Stevenson and MacColl wind farms have been applied for and have been given EIA approval. They await a regulatory decision.