

8 DESIGNATED SITES AND LEGISLATION

8.1 INTRODUCTION

1. This Section of the ES provides summary information on sites that are protected under European Directives and/or UK Legislation. The Section focuses on identifying sites that are located near to, or that could possibly be affected by, the Wind Farm and the OfTW.
2. Consideration has been given to international, European, national and local designations. A brief description of applicable conservation legislation is also presented.
3. This section of the ES is supported by Annexes 8A and 8B. Annex 8A lists all the European, national and local designated sites within 100 km of the application site boundary. Table 8A in Annex 8A gives a synopsis of the qualifying interests for each designated site. The location of designated sites is illustrated in Figures 8.1 and 8.2. Annex 8B provides the draft list prepared by SNH of Priority Marine Features (PMFs) for Scottish Territorial Waters.
4. This exercise has been informed by a desk-based study and presents baseline information available from public sources. No impact assessment is presented within this Section.
5. Assessments of the likely significant effects of the Project on the designated sites identified in this Section of the ES (and the species within them) have been reported in the relevant specialist topic Sections of this ES, including:
 - Physical Processes and Geomorphology (Section 9 and 22);
 - Benthic Ecology (Section 10 and 23);
 - Fish and Shellfish Ecology (Section 11 and 24);
 - Marine Mammals (Section 12 and 25); and
 - Ornithology (Section 13 and 26).
6. A separate document containing information to inform an Appropriate Assessment as required under the Habitats Regulations has been prepared and will be submitted to MS as the competent authority as part of the application. The HRA considers any likely significant effects on the European sites (on the basis of the sites' conservation objectives).
7. The following conventions, legislation and regulations are relevant:
 - The Convention on Biological Diversity;
 - The OSPAR Convention;
 - The Marine Strategy Framework Directive;
 - Convention on Wetlands, Ramsar 1971;
 - Council Directive 2009/147/EC on the Conservation of Wild Birds (EU Birds Directive);
 - Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (the "Habitats Directive");
 - Wildlife and Countryside Act 1981 (as amended);

- Conservation of Habitats and Species Regulations 2010 (as regards reserved matters in Scotland);
- Conservation (Natural Habitats &c.) Regulations ;
- Nature Conservation (Scotland) Act 2004;
- Marine (Scotland) Act 2010;
- UK Marine and Coastal Access Act 2009; and
- National Parks and Access to the Countryside Act 1949.

8.1.1 INTERNATIONAL DESIGNATIONS - RAMSAR SITES

8. The Convention on Wetlands, signed in Ramsar, Iran (1971) is an intergovernmental treaty providing a framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The primary criteria to assess the site for inclusion within the Ramsar listing is if the wetland regularly supports 20,000 water birds and/or if it supports 1% of the individuals in the population of one species or subspecies of water bird.
9. Ramsar sites will, as a matter of policy, be afforded the same protection as European designations SPAs and SACs.

8.1.2 EUROPEAN DESIGNATIONS

10. Figures 8.a-c illustrate the location of all European designated sites within 100 km of the Wind Farm Site. Table A8 in Annex 8A presents a full list of these sites and gives a synopsis of the qualifying interests for each. The closest European designations to the Wind Farm at 16.5 km and 37 km respectively are the Caithness Cliffs SPA and the Moray Firth SAC. Figure 8.2 illustrates the designated sites in the localised area of the OfTW landfall.
11. In 1992 the EC adopted Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive). The provisions of the EC Habitats Directive required EC Member States to introduce a range of measures including the protection of habitats and species listed in Annexes I and II of the Directive. The 189 habitats listed in Annex I and the 788 species listed in Annex II are protected by means of a network of sites (known as the Natura 2000 network of sites). Council Directive 2009/147/EC on the conservation of wild birds (which codified a previous Directive from 1971) (EC Birds Directive) fulfils a parallel role for bird species.
12. In Scotland, the Conservation of Habitats and Species Regulations 2010 and the Conservation (Natural Habitats, &c.) Regulations 1994 transpose the requirements of the EC Habitats Directive and EC Birds Directive into national law, up to the 12 NM territorial waters limit. The 2010 Regulations consolidate various amendments to the 1994 Regulations and apply in Scotland to, among other things, Section 36 applications. Under these Habitat Regulations a network of protected sites for birds (SPAs) and certain habitats and species (SACs) have been established in the UK.
13. SPAs are classified for rare and vulnerable birds, listed in Annex I of the Birds Directive, and for regularly occurring migratory species. Criteria for selection of

SPAs are described in The Birds Directive - Selection Guidelines for SPAs, published in 1999 by the JNCC.

14. SACs are selected for particular habitats and species which are listed in Annexes of the EC Habitats Directive. The European Commission has produced an Interpretation Manual for the Annex I habitats which occur in the European Union. There is also European involvement in the designation process for SACs and all proposed sites have to be adopted by the Commission before they can be designated by national governments.
15. Beyond 12 NM, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 apply.

8.12.1 *Protection of European Designated Areas*

16. Projects which are likely to have a significant effect on European protected sites (either alone or in combination with other plans or projects) are subject to particular consideration of their impacts through an Appropriate Assessment (part of the HRA process).
17. As a matter of policy, the need for an Appropriate Assessment also extends to candidate SACs (cSACs), provided that such sites have been submitted for designation by the UK Government for the approval of the European Commission, and to sites which qualify, but which have not yet been classified as SPAs (pSPAs). There are no cSACs or pSPAs identified within 100 km of the Moray Firth. As a matter of policy Appropriate Assessment extends to effects on Ramsar sites.
18. The authority making an Appropriate Assessment is known as the Competent Authority, as defined in Regulation 6 of the Conservation (Natural Habitats, &c.) Regulations 1994, Regulation 5 of The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 and Regulation 7 of The Conservation of Habitats and Species Regulations 2010. In the case of the Project this will be Scottish Ministers acting through MS-LOT.
19. A separate Report to Inform an Appropriate Assessment has been submitted to accompany the ES and provides information to aid any Appropriate Assessment exercise is to be undertaken by MS as the competent authority. Individual topic sections of the ES include assessments of the likely significant effects of the Project on designated sites identified in this section.
20. If the Appropriate Assessment concludes that the development would have an adverse effect on the integrity of a European site (having regard to the conservation objectives), then the development can only proceed if the Competent Authority making the Appropriate Assessment is satisfied that there are no alternative solutions and (in turn) that the project should proceed for reasons of overriding public interest (which may be economic or social in nature). Compensatory habitat may also need to be provided.

8.1.3 NATIONAL DESIGNATIONS

21. Table A8 in Annex 8A presents a full list of these sites and gives a synopsis of the qualifying interests for each. Figure 8.2 illustrates the location of all nationally designated sites within 20 km of the OfTW landfall.

8.1.3.1 *Sites of Special Scientific Interest (SSSI)*

22. SSSIs are onshore areas of special interest for wildlife, geology and landforms, as notified under the Wildlife and Countryside Act 1981. The Nature Conservation (Scotland) Act 2004 gives additional protection to SSSIs, which are awarded a particular level of protection against damaging activities to preserve the natural heritage. Scottish Planning Policy 2010, although not directly applicable to offshore developments, sets out the Scottish Government's policy on Landscape and Natural Heritage and how sites such as SSSIs should be protected.

8.1.3.2 *National Nature Reserves and Marine Nature Reserves*

23. National Nature Reserves (NNRs) and Marine Nature Reserves (MNRs) are designated under the Wildlife and Countryside Act 1981 for England, Scotland and Wales. Both types of reserves are designated as places of importance for wildlife and natural features in the UK. All NNRs are classed as SSSIs, but the NNR focus is more on conservation. Although onshore, coastal NNRs could potentially be affected by the Project.

8.1.4 LOCAL DESIGNATIONS

8.1.4.1 *Site of Importance for Nature Conservation (SINC)*

24. A SINC is an area of land and/or wetland of local importance for the conservation of semi-natural habitats including mosaics of heathland, unimproved grassland, scrubland and plantation and/or habitats that support rare local wildlife species. As such, they are not of sufficient extent or quality to qualify for national recognition as a SSSI. Although onshore, and unlikely to be impacted by the Project, for completeness those in proximity to the Moray Firth are presented in Annex 8A.

8.1.4.2 *Local Nature Reserve (LNR)*

25. The National Parks and Access to the Countryside Act 1949 gives local planning authorities the power to acquire, declare and manage nature reserves. These reserves are designated as being of particular importance to nature conservation and public understanding of nature conservation issues is encouraged. Although onshore, and unlikely to be impacted by the Project, for completeness those in proximity to the Moray Firth are presented in Table A8 of Annex 8A.

8.1.5 OTHER APPLICABLE LEGISLATION

26. The Water Framework Directive (2000/60/EEC) addresses the quality of inland, estuarine and groundwater bodies with a view to ensuring a "good status" by 2015. The precise nature of "good status" depends on the type of water body and member States can opt to extend the deadline to 2027 in some circumstances. It also applies to coastal waters up to one nautical mile from the shore. The OfTW elements of the

- Project pass through this zone so the Water Framework Directive is therefore applicable to the Project.
27. The Marine (Scotland) Act 2010 includes new marine conservation powers including:
- Marine conservation: improved marine nature and historic conservation with new powers to protect and manage areas of importance for marine wildlife, habitats and historic monuments;
 - Seal conservation: increased protection for seals and a new licence system to ensure appropriate management when necessary; and
 - Enforcement: a range of improved powers of marine conservation and licensing.
28. The legislation also requires that a network of Marine Protected Areas (MPAs) is created in Scottish Territorial Water to protect biodiversity and geodiversity. This complements the existing Marine Conservation Zones (MCZ) introduced through the UK Marine and Coastal Access Act 2009 for offshore waters¹ around Scotland.
29. The Scottish Government's Marine Nature Conservation Strategy refers to a 'three-pillar approach' to effective marine nature conservation:
- Site-based protection (including MPAs);
 - Species protection (such as fisheries closures); and
 - Other measures which contribute in some way to the effective conservation of Scotland's seas (such as marine spatial planning).
30. In developing a network of MPAs the Scottish MPA Project is being progressed to provide the best possible advice to Scottish Ministers on the selection of MPAs in the seas around Scotland. This project is a joint initiative between MS, the JNCC, Historic Scotland and SNH.
31. SNH has reviewed a large number of marine habitats and species to identify those considered to be of greatest marine nature conservation importance in Scottish territorial waters. These features of importance are known as PMFs. A draft list of PMFs for Scottish Territorial Waters has been prepared by SNH and this is included in Annex 8B.
32. Scottish MPA Selection Guidelines were published in February 2011. Thirty MPA search locations were generated through the application of these Guidelines and considered at the 3rd MPA stakeholder workshop held in October 2011. The MPA search locations vary in size from the 49,000 km² Faroe-Shetland Channel to small sea lochs on the west coast such as Loch Leven, which is 8 km² by comparison. The total area covered by the 30 MPA search locations is 107,308 km². The boundaries of the search locations are indicative only at this time.
33. The closest MPA search location to the Project at approximately 15 km from the application site boundary is the horse mussel bed to the south of the Sinclair Bay which is believed to be the largest example of this MPA search feature in Scottish

¹Offshore waters are defined as those beyond 12nm.

waters. Analysis of 2011 survey data from this location is on-going to determine the validity of this single feature proposal. No potential effects are predicted on the search feature for this proposed MPA.

34. The MPA locations proposed to date have only been for non-mobile species. A workshop is being held in March 2012 to identify suitable areas for mobile species so more MPAs will emerge from this process. In addition third party organisations such as RSPB and WDCS are also able to propose sites.

8.2 REFERENCES

35. EC, 2007. Interpretation Manual of European Union Habitats (EUR27);
36. JNCC, 1999. Selection Guidelines for SPAs. <http://jncc.defra.gov.uk>;
37. Marine Scotland, Scottish Government, SNH and JNCC, 2011. Marine Protected Areas in Scotland's Seas, Guidelines on the selection of MPAs and development of the MPA network;
38. Scottish Government, 2010. Scottish Planning Policy;
39. Scottish Government and Marine Scotland, 2011. A Strategy for Marine Nature Conservation in Scotland's Seas;
40. SNH and JNCC, 2011. Draft List of Priority Marine Features in Scottish Territorial Waters.