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Our Ref: 018/OW/AOWFL - 9

09 January 2018

Dear Ms Villoria,

ENERGY ACT 2004: OFFSHORE WIND ELECTRICITY GENERATING STATION

**SAFETY ZONE APPLICATION – EUROPEAN OFFSHORE WIND DEPLOYMENT CENTRE,
ABERDEEN**

1. The Application

- 1.1. I am directed by the Scottish Ministers to refer to the Safety Zone application submitted on 22 September 2017 (“the Application”) by Aberdeen Offshore Windfarm Limited (“AOWFL”) (“the Applicant”) to the Scottish Ministers for a notice to be issued by the Scottish Ministers under section 95(2) of the Energy Act 2004 (“the Act”), declaring that the areas specified under the Application be safety zones for the purpose of securing the safety of the European Offshore Wind Deployment Centre (“EOWDC”) and individuals and vessels in its vicinity during the period of construction, operation and maintenance.
- 1.2. The Applicant has requested the declaration, during the construction of the EOWDC of safety zones with a radius of 500 metres, within the meaning of that term in regulation 2 of the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007/1948 (“the 2007 Regulations”), around the location of each wind turbine and their substructures/foundations. In addition, the Applicant has also requested that safety zones of 50 metre radius should be put in place around each wind turbine and their substructures/foundations whilst work is not ongoing (but before the operation of the wind farm commences). Finally, the Applicant also requests a 500 metre radius safety zone around all ‘major maintenance’ being undertaken on wind turbines and their substructures/foundations.
- 1.3. A Notice of Application (the “Public Notice”) was published and served by the Applicant in accordance with the requirements of the Energy Act 2004 and regulations 4 and 5 of the 2007 Regulations.

2. Representations

- 2.1. The Scottish Ministers note that a range of views concerning the safety zones were requested by the Applicant. While there was a general acceptance that safety zones of the dimensions and applications set out in the Application were reasonable measures to

secure the safety of mariners and those people working on the wind turbines, including their foundations/substructures, a number of consultees raised issues about aspects of the requested safety zones. A summary of the views of individual consultees and the Applicant's response to the points raised is set out below:

- i. Aberdeen Harbour Board ("AHB") sought further information, including a plan showing the 500 metre exclusion zone around each wind turbine generator ("WTG") and the cable areas and how these exclusion zones would impact on the Maritime and Coastguard Agency ("MCA") anchorage to the south of the EOWDC development area. AHB also noted the possible need for a possible 1 km area where the large construction vessels may have anchors laid whilst engaged on the project. AHB highlighted that this anchorage is primarily used by vessels awaiting entry into Aberdeen for work and any restrictions in the anchorage area could have an impact in pushing vessels further south towards AHB's harbour roads, which may have an impact on AHB's ability to manoeuvre vessels that are entering into or departing from Aberdeen Harbour.

Applicant's response – provided two figures; one showing 500 metre safety zones around each wind turbine location and one showing a likely worst case around two locations. The safety zones are only activated if there are construction vessels present and working of the wind turbine structure, therefore it is unlikely that there will be more than two safety zones active at once (given the number of construction vessel AOWFL are employing). The safety zones do not overlap the anchorage area and are within the buoyed construction area dictated by the NLB. The construction buoys (in consultation with NLB) and safety zones (use of) will be removed following commissioning of the site. 1km anchor cables are worst case and anything outside of 500 metre around a turbine structure would not be covered by a safety zone; instead the vessel would apply standard marine practice. Notice to Mariners will include detail on which wind turbines will have safety zones in place; this information can also be obtained from the Marine Coordinator. Please also be assured that AOWFL have liaised closely with the MCA, Northern Lighthouse Board ("NLB") and the Ministry of Defence ("MoD") over the application and use of these safety zones.

Marine Scotland's response – Marine Scotland Licensing Operations Team ("MS-LOT") is satisfied that the Applicant has fully addressed the points raised by AHB in response to this Application.

- ii. Blackdog Salmon Fishings Ltd ("BSF") objected to the granting of any safety zones which would restrict the owner of Blackdog Salmon Fishings Ltd from exercising its heritable title, stating that any such restriction is unlawful and would be challenged if the Application was granted. BSF stated that no further action could be taken until existing Court proceedings were concluded.

BSF also highlighted that Vattenfall/AOWFL's Crown Estate lease included the caveat that it was "subject to the public rights of navigation and fishing... and all other rights, servitudes, licenses, wayleaves, quasi servitudes, licences and wayleaves exercisable over the Premises and Designated Area."

In addition, BSF advised that it intends to deploy salmon/sea trout nets throughout the coming season, commencing on 11 February 2018 until the end of said netting season. BSF also advised that it is in the process of procuring a larger licensed commercial fishing vessel for the deployment of creels and the fishing of dabs, plaice, whiting and other commercially viable species both within and outwith the area for which BSF has heritable title, under the public right to fish.

BSF has articulated its intention to continue to object to any matters which may interfere with its right to enjoy its heritable title under Article 1 of Protocol 1 of the European Convention on Human Rights and any other relevant legislation.

Applicant's response – the Applicant responded to the issues raised by BSF, stating that the potential impacts on fishing had been considered and addressed under Paragraph 12.3 of the risk assessment included in the Application, “...noted that there are salmon netting stations located to the west of the development and the maximum extent of the proposed safety zones. These have not been fished. If the netting is recommenced, it is not anticipated that the safety zones would impact upon their operation.” The Applicant also stated that the risk assessment had concluded that there would be limited impacts on fishing vessels.

The Applicant's response also addressed the comments in relation to adverse impacts on BSF's ability to fish under the public right and exercise its heritable rights. The Applicant stated that the right to undertake netting for salmon and ancillary fish is also subject to further legislative provisions and restrictions beyond the implementation of safety zones.

The Applicant also stated that it had sought to minimise the impact of the safety zones through the implementation of rolling and proportionate safety zones and that the submissions made by BSF did not challenge the findings of the risk assessment included in the Application. During the construction phase, out of the 11 WTGs, no more than 2 safety zones would be in place at any one time. The safety zones will move with the activity and construction (RAM) vessels. No safety zones will be applied during normal operations.

Marine Scotland's response - Marine Scotland Compliance (“MSC”) has confirmed that its records indicated that BSF has not fished since 2008 and the fishing station has been considered as dormant since 2012. BSF has informed MSC that it intends to fish for sea trout during 2017 and 2018 and has inferred, in some correspondence, that it has deployed nets. MSC has advised that, to date, it has received no further information to support these claims.

Marine Scotland Licensing Operations Team (“MS-LOT”) notes that a Fisheries Mitigation Strategy has been developed in support of the wider EOWDC project, which includes a process for compensation should any loss of earnings be incurred as a result of the project. MS-LOT is satisfied that the Fisheries Mitigation Strategy provides a sufficient mechanism to address any loss of earnings resulting from the implementation of the safety zone(s), should BSF choose to exercise its public or heritable rights.

MS-LOT also notes that the BSF did not raise an objection to the introduction of safety zones within the Environmental Statement submitted in support of the application for consent under Section 36 of the Electricity Act 1989. BSF did submit objections citing incorrect information provided in the application documentation (in relation to the impacts on salmon fishery due to electromagnetic fields, noise and vibrations impacting on migratory patterns). However, BSF withdrew these objections in response to the consultation on the Supplementary Environmental Information Statement.

Having fully considered all relevant circumstances, MS-LOT is satisfied that it would be appropriate on the basis of safety concerns for the Scottish Ministers to declare safety zones under section 95 of the Energy Act 2004. MS-LOT is satisfied that the declaration of safety zones is compatible with the provisions of Article 1 of Protocol 1 of the European Convention on Human Rights. A declaration of safety zones, in this instance, would be in the pursuit of a legitimate aim, namely, to secure the health and safety of the renewable energy installation and any other installations or vessels in the vicinity, and the health and safety of any individuals in or on the renewable energy installation and any other vessels or installations in the vicinity (as per Section 95(2) of the Act). Moreover, the adoption of the safety zones specified by the Applicant would meet that aim.

In addition, the restrictions placed on BSF's rights by virtue of the declaration of safety zones would be limited (both spatially and temporally), and any disadvantages to BSF would be outweighed by the public benefit derived from the achievement of the objectives set out in Section 95(2) of the Act.

In particular, MS-LOT is satisfied that, due to the high level of marine traffic in the area, it is appropriate to issue a notice specifying a rolling programme of safety zones during the construction, operation and maintenance phases of the project to achieve the objectives set out in section 95(2). The implementation of safety zones, in conjunction with other measures outlined in the Application, will provide an additional level of protection against collision, particularly during the early phases of the Development when vessels may not be fully aware of the construction activities or be familiar with the development and reduce the risk of interaction with anchor spread.

The implementation of 'rolling safety zones' minimises potential disruption for other marine users, by restricting their implementation to certain circumstances and time-scales and is more proportionate than the implementation of a permanent exclusion zone. Therefore, MS-LOT believes that the implementation of the safety zones, as described in the Application and supporting documentation, is proportionate in securing the objectives set out at section 95(2) whilst minimising disruption to other marine users.

- iii. The Chamber of Shipping offered no substantive comments on the Application and noted that the Application appeared to follow the agreed protocols;
- iv. The Cruising Association offered no substantive comments on the Application;
- v. The Department for Business, Energy & Industrial Strategy ("BEIS") responded to confirm that it no longer has any locus in the consideration of safety zone applications for projects wholly within Scottish waters and, therefore, would not be providing a response to this consultation;
- vi. The Maritime and Coastguard Agency fully supports and has no objection to the introduction of safety zones as presented during the construction, pre-commissioning and operational phases;
- vii. The Northern Lighthouse Board offered no substantive comments on the Application and stated that it was content with the submitted Application and supporting evidence;
- viii. The Royal Yachting Association (Scotland) ("RYA Scotland") confirmed that the proposed safety zones conformed to RYA policy and that it was happy for the application to succeed. However, RYA Scotland indicated that the proposal for rolling safety zones relates to a wider issue around communication of temporary Notices to Mariners to recreational skippers, which the RYA no longer publishes on its website. RYA Scotland suggested that a useful form of mitigation would be the creation of a single website containing all current Notices to Mariners in operation between the border with England and Duncansby Head, or perhaps something akin to the [Traffic Scotland Traffic Info Map](#) that could identify all areas where navigational restrictions or works are expected to be taking place, perhaps via the format of a layer in NMPi which could be updated on a daily basis.
- ix. The Scottish Fishermen's Federation offered no substantive comments on the Application;
- x. Scottish Natural Heritage offered no substantive comments on the Application.

3. The decision of the Scottish Ministers

3.1. In addition to the points set out in section 2 above, the Scottish Ministers note that:

- "Major maintenance works" are defined in the 2007 Regulations as "works relating to any renewable energy installation which has become operational, requiring the attachment to, or

anchoring next to, such as the installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel”;

- The EOWDC will be marked and lit in accordance with relevant requirements;
- As indicated in the Application, the Applicant has confirmed that there will be guard vessel(s) on station during the construction of the project;
- The Applicant has stated it will only take action if infringements of a safety zone occur in a situation where such infringements are deliberate and malicious, cause damage, nuisance or endanger lives;
- The Applicant will issue regular Notices to Mariners and has also indicated it will promulgate relevant information about construction operations and safety zones through Kingfisher fortnightly bulletins, port liaison etc. (Such information should also be sent to appropriate contacts within the Scottish Government and Marine Scotland to keep them informed of progress). The construction site will be marked on relevant charts prior to the commencement of the installation of any foundations;
- Vessels engaged in the construction of the wind farm or its major maintenance will, in the first instance, warn any unauthorised vessels that look as if they might be on a trajectory which would take them into a safety zone, to alter their course;
- The Applicant states that any guard vessels being used to intercept non-project vessels that might be perceived to be on a course to enter safety zones will proceed on the basis of “constantly ensuring its own and the third party vessels’ safety”. The project and third party vessels would, in addition, be bound by any relevant legal requirements to maintain the safety of those vessels;
- Within areas declared to be a 500 metre safety zone or a 50 metre safety zone, the vessels permitted to enter and remain in the zone are vessels involved in activities related to construction and major maintenance works;
- As indicated above, the Applicant has stated that there would be a maximum of two safety zones of 500 metres radius around structures at any particular time during construction; and
- Options for the prosecution of any incursions into the safety zone are deliberate and malicious, cause damage, nuisance or endanger lives will be considered on the basis of the particulars of the case.

3.2. The Scottish Ministers, having considered the representations and all other material considerations, does not consider it appropriate for a public inquiry to be held with respect to the application.

3.3. In light of the matters set out above, the Scottish Ministers consider that the declaration of safety zones of the type requested during construction of and major maintenance to the EOWDC is necessary for the purpose of securing the safety of installations comprising the EOWDC and individuals working thereon because they will help to reduce the inherent navigational risk of interference or collision by vessels during the construction of this project. The declaration is set out in section 4 below.

4. The Declaration

4.1. The Scottish Ministers hereby issue this notice declaring safety zones in the following terms:

During construction

- A 500 metre radius around each wind turbine generator where construction works are taking place that include sensitive activities being undertaken by vessels Restricted in their Ability to Manoeuvre (RAM).
- A 50 metre radius around partially completed wind turbine generators where work is not underway and the risk assessments identify a need.
- A 50 metre radius around each completed wind turbine generator prior to commissioning and as required by a risk assessment process.

During major maintenance

- A 500 metre radius around all major maintenance works being undertaken around the wind turbine generators.

4.2. This notice comes into force from the date of this letter.

4.3. For the purposes of this notice, the European Offshore Wind Deployment Centre comprises the offshore wind turbines, inter-array cabling and export cables for which consent was granted by the Scottish Ministers under section 36 of the Electricity Act 1989 on 26 March 2014.

5. Right of appeal & legal challenge

5.1. There is no right of appeal regarding this decision under the provisions of the Energy Act 2004. Please note, however, that any party to the decision has the right to submit an application for judicial review to the Court of Session.

Yours sincerely,

Roger May
Marine Scotland Licensing Operations Team

Cc Aberdeenshire Council
 Aberdeen Harbour Board
 Blackdog Salmon Fishings Ltd
 Chamber of Shipping
 The Cruising Association
 Fraserburgh Harbour Commissioners
 The Crown Estate (Scotland)
 Maritime and Coastguard Agency
 Northern Lighthouse Board
 Peterhead Port Authority
 Royal Yachting Association (Scotland)
 Scottish Fishermen's Federation
 Scottish Natural Heritage