

A photograph of an offshore wind farm at sunset. The sky is a mix of orange, yellow, and grey, with a few clouds. The sea is dark with white-capped waves in the foreground. Several wind turbines are visible, their silhouettes against the bright sky. The overall mood is serene and powerful.

Salamander Offshore Wind Farm

Offshore EIA Report

Volume ER.A.2, Chapter 2: Legislative Context and
Regulatory Requirements



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Glossary

Term	Definition
Contracts for Difference (CfD)	The Contracts for Difference (CfD) scheme is the UK government's main mechanism for supporting low-carbon electricity generation. CfDs incentivise investment in renewable energy by providing developers of projects with high upfront costs and long lifetimes with direct protection from volatile wholesale prices.
Environmental Impact Assessment (EIA)	A statutory process by which the likely significant effects of certain projects must be assessed before a formal decision to proceed can be made. It involves the collection and consideration of environmental information, which fulfils the assessment requirements of the Environmental Impact Assessment (Scotland) Regulations (2017), including the publication of an Environmental Impact Assessment Report (EIAR).
Environmental Impact Assessment Report (EIAR)	A document reporting the findings of the EIA and produced in accordance with the EIA Regulations.
Energy Balancing Infrastructure (EBI)	Energy Balancing Infrastructure which will provide services to the electrical grid, such as storing energy to meet periods of peak demand and improving overall reliability, as well as additional services such as system monitoring and computing. EBI will be housed within buildings and / or containers will be co-located with the Onshore Substation.
Kyoto Protocol	The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change, which commits its parties to reducing greenhouse gas emissions by setting internationally binding emission reduction targets, implemented primarily through national measures but also via wider market based mechanisms.
Offshore Development	The entire Offshore Development, including all offshore components of the Project (WTGs, Inter-array and Offshore Export Cable(s), floating substructures, mooring lines and anchors, and all other associated offshore infrastructure) required across all Project phases from development to decommissioning, for which the Applicant is seeking consent.
Offshore Development Area	The total area comprising the Offshore Array Area and the Offshore Export Cable Corridor.
Offshore Export Cable(s)	The export cable(s) that will bring electricity from the Offshore Array Area to the Landfall. The cable(s) will include fibre optic cable(s).
Receptor (Offshore)	Any physical, biological or anthropogenic element of the environment that may be affected or impacted by the Salamander Project. Receptors can include natural

Term	Definition
	features such as the seabed and wildlife habitats as well as man-made features like fishing vessels and cultural heritage sites.
Salamander Project	The proposed Salamander Offshore Wind Farm. The term covers all elements of both the offshore and onshore aspects of the project.
Scoping	An early part of the EIA process by which the key potential significant impacts of the Salamander Project are identified, and methodologies identified for how these should be assessed. This process gives the relevant authorities and key consultees opportunity to comment and define the scope and level of detail to be provided as part of the EIAR – which can also then be tailored through the consultation process.
Wind Turbine Generator	All the components of a wind turbine, including the tower, nacelle, and rotor.

Acronyms

Term	Definition
AA	Appropriate Assessment
CBD	Convention of Biological Diversity
CfD	Contracts for Difference
COP	Conference of Parties
EBI	Energy Balancing Infrastructure
EGPS	Electricity Generation Policy Statement
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
EMR	Electricity Market Reform
EU	European Union
GES	Good Environmental Status

Term	Definition
GW	Gigawatts
HRA	Habitats Regulations Appraisal
JNCC	Joint Nature Conservation Committee
INTOG	Innovation and Targeted Oil and Gas
IROPI	Imperative Reasons of Overriding Public Interest
LSE	Likely Significant Effects
MD-LOT	Marine Directorate - Licensing Operations Team
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs
MW	Megawatts
nm	nautical miles
NMP	National Marine Plan
NPS	National Policy Statement
OWIG	Offshore Wind Industry Group
PAC	Pre-application Consultation
RED	Renewable Energy Directive
REZ	Renewable Energy Zone
RMP	Regional Marine Plan
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SPA	Special Protection Area
SMP	Sectoral Marine Plan
SWPC	Salamander Wind Project Company Limited (formerly called SBES)

Term	Definition
UK	United Kingdom
UN	United Nations
UXO	Unexploded Ordnance
WTG	Wind Turbine Generator

2 Legislative Context and Regulatory Requirements

2.1 Introduction

- 2.1.1.1 The Applicant, Salamander Wind Project Company Limited (SWPC), a joint venture (JV) partnership between Ørsted, Simply Blue Group and Subsea7, is proposing the development of the Salamander Offshore Wind Farm (hereafter 'Salamander Project'). The Salamander Project will consist of the installation of a floating offshore wind farm (up to 100 megawatts (MW) capacity) approximately 35 kilometres (km) east of Peterhead. It will consist of both offshore and onshore infrastructure, including an offshore generating station (wind farm), export cables to landfall, and connection to the electricity transmission network (please see **Volume ER.A.2, Chapter 4: Project Description** for full details on the Project Design).
- 2.1.1.2 This chapter explains the relevant policies, legislation, and material considerations for the Offshore Development of the Salamander Project. A similar chapter will be produced for the legislations, policies and material considerations for the Onshore Development of the Salamander Project.
- 2.1.1.3 This chapter considers the relevant legislative requirements for an Environmental Impact Assessment (EIA) and sets out the wider policy and legislative context, including:
- A description of the consenting and licensing approach for the Offshore Development of the Salamander Project;
 - The relevant UK and Scottish climate change legislation and policy which provides context for the overall need for the Salamander Project;
 - A summary of the various consenting requirements for the construction, operation and decommissioning phases of an offshore wind farm; and
 - Other legislation, policies, and material considerations relevant to the Salamander Project.
- 2.1.1.4 Further policies and legislation which relate to specific EIA topics are outlined within the relevant chapters of the Environmental Impact Assessment Report (EIAR).

2.2 Consenting Overview

- 2.2.1.1 For the overall consenting purposes, the Salamander Project will consist of three distinct project elements:
- The Offshore Development Area – comprising all offshore works and infrastructure seaward of Mean High Water Springs (MHWS);
 - The Onshore Development Area – comprising onshore works and infrastructure to Mean Low Water Springs (MLWS) not including the Energy Balancing Infrastructure (EBI); and
 - The EBI including battery storage.
- 2.2.1.2 However, this document will focus on the legislative context for the Offshore Development of the Salamander Project, which includes the offshore infrastructure below MHWS.
- 2.2.1.3 The Offshore Development will be assessed in this EIA, with this section of the wider Salamander Project requiring consent from the Marine Directorate - Licensing Operations Team (MD-LOT).

2.3 Requirement for an Environmental Impact Assessment

- 2.3.1.1 The EIA procedure functions as a way to determine and assess potentially significant effects of a project on the environment. Mitigation and management strategies for these significant impacts are identified through the EIA process to reduce negative impacts, promote sustainability, and enhance the environment.

The EIA procedure also enables stakeholders to engage in the decision-making process which ensures the requirements to undertake stakeholder consultation is carried out.

- 2.3.1.2 The EIA Directive (85/337/EEC as amended by 97/11/EC, 2003/35/EC and 2009/31/EC, codified by 2011/92/EU as amended by 2014/52/EU) sets out a requirement for an EIA to be conducted in support of an application for consent. This is for various project types that will potentially have a significant environmental impact, including offshore wind farms.
- 2.3.1.3 The EIA Directive was implemented into Scottish Law under (inter alia) the following legislation:
- The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 applies to all applications under Section 36 of the Electricity Act 1989 for consent to construct, extend or operate a generating station;
 - The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017; and
 - The Marine Works (Environmental Impact Assessment) Regulations 2007.
- 2.3.1.4 The requirements of the EIA Directive are enacted through UK legislation that is relevant to projects which generate electricity that require consent under Section 36 of the Electricity Act 1989 by the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. This is as well as in relation to marine licensing by the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Marine Works (Environmental Impact Assessment) Regulations 2007. This outlines the minimum requirements and statutory process for an EIA.
- 2.3.1.5 The Offshore Development of the Salamander Project will require an EIA, as it falls under the relevant criteria set out within Schedule 2 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017. The criteria are as follows:
- There are more than two Wind Turbine Generators (WTG); or
 - The hub height or the height of any other component is greater than 15 metres (m).
- 2.3.1.6 The Offshore Development of the Salamander Project also falls under Schedule 2 'Carrying out of development to provide a generating station' of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 as well as Schedule A2 'Installations for the harnessing of wind power for energy production (wind farms)' of the Marine Works (Environmental Impact Assessment) Regulations 2007.
- 2.3.1.7 The Salamander Project by virtue of its nature, size and location is likely to result in significant environmental effects. Where significant environmental effects are anticipated, an EIA is required to be submitted alongside the Section 36 Consent application under The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.
- 2.3.1.8 The EIA Regulations require that any potential environmental impacts of a project are considered before development consent is given. Upon completion of the EIAR, the results must be shared with the decision-maker (MD-LOT) and the decision-maker must take into account the EIAR before consent can be granted.
- 2.3.1.9 Additionally, Schedule 4, section 6 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 sets out the following requirement:
- 'The description of the likely significant effects on the factors specified in regulation 5(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the works. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the works including in particular those established under Council Directive 92/43/EEC on the*

conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds’.

- 2.3.1.10 To comply with this requirement, a description of potentially significant effects is provided within each technical chapter of this Offshore EIAR (where applicable) and summarised in **Volume ER.A.3, Chapter 23: Summary of Impacts and Mitigations.**
- 2.3.1.11 As a result of the size and scale of the Offshore Development for the Salamander Project, an EIAR has been prepared in support of the Offshore application to MD-LOT. Additional policies and legislation relevant to each EIA topic are discussed in the relevant chapters of this EIAR.
- 2.3.1.12 The stages carried out to prepare the EIAR are as follows:
- Scoping to establish the EIAR content and the issues to be addressed by the EIAR.
 - Reviewing the available data and/or performing baseline surveys in order to obtain data for the Offshore Development.
 - Assessment and design iteration which involves the assessment of any significant impacts from the construction, operation, maintenance, and decommissioning phases. The feedback from this is forwarded to the relevant teams and any modifications to avoid, prevent, reduce, and offset any impacts are made.
 - Construction methodology and final development design assessment.
 - Residual effects and any further mitigation measures identification.
 - Preparation of the EIAR.

2.4 Climate Change and Energy Legislation and Policy Supporting the Need for the Salamander Project

2.4.1 International

- 2.4.1.1 As a result of the increasing urgency to combat climate change, the UK Government has signed a range of international protocols and agreements to commit towards reducing carbon emissions.
- 2.4.1.2 The UK is a signatory to the Kyoto Protocol which came into effect in 2005 (United Nations, 1998). This protocol is a legal agreement that binds Governments across the globe to emission reduction targets. The commitments outlined in the Kyoto Protocol were integrated into UK law via the Climate Change Act 2008 and into Scottish law via the Climate Change (Scotland) Act 2009. Initially, this required greenhouse gas emissions to be reduced to a position at least 80% lower than the baseline level of emissions in 1990 by 2050. However, in 2019, the UK’s Climate Change Act 2008 was adjusted by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 to increase the emission reduction target to 100% below the levels recorded in 1990 by 2050, thereby achieving a net-zero society. The Climate Change (Scotland) Act 2009 was amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 to require a 100% reduction by 2045, as well as interim targets in the years leading up to this.
- 2.4.1.3 The ‘Paris Agreement’ came into effect in 2016 after the United Nations Conference of Parties 21 (COP21). 196 countries, including the UK, agreed to adopt the global climate deal and contribute towards limiting an increase in global temperature to less than 2°C. The countries also agreed to make efforts to limit the temperature increase to 1.5 °C above the pre-industrial average temperature. At COP26 in 2021, it was detailed that globally the targets were being missed. At COP28 in 2023, the Global Renewables and Energy Efficiency Pledge was launched, with signatories committing to work collaboratively to triple the global renewable energy generation capacity by 2030; this has been signed by the UK. At COP28, the UK also signed

the Joint Statement on Climate, Nature and People, which commits to aligning countries climate and biodiversity agendas, recognizing the interconnectedness of climate change biodiversity loss and ecosystem degradation.

2.4.2 European

2.4.2.1 Despite the UK leaving the European Union (EU) in January 2020, the UK Government is still committed to upholding international environmental obligations in accordance with the EU (Withdrawal) Act 2018. This includes the Renewable Energy Directive (2009/28/EC) (RED I) (European Union, 2009). RED I came into effect in 2009 and it established the extent of the use of renewable energy in EU countries between 2009 and 2021. Although, RED I was subsequently altered in 2018 via the creation of the Renewable Energy Directive (2018/2001/EU) (RED II) (European Union, 2018). This meant the EU, including the UK, were cumulatively bound to meet 32% of their energy requirements using renewable energy by 2030.

2.4.3 United Kingdom

2.4.3.1 Both the UK and Scottish Governments made legally binding emission reduction commitments, via the Climate Change Act 2008 and the Climate Change (Scotland) Act 2009. The Electricity Market Reform (EMR) Policy and Energy Act 2013 (The Energy Act 2013) was introduced by the UK Government. The Energy Act 2013 describes the UK's commitment to enhancing and investing in the low carbon energy industries. This is to make low-carbon energy sources secure and affordable. The Energy Act 2013 enabled the implementation of an EMR. This reform contained measures in the form of the CfD allocation framework, created to attract £110 billion investment necessary for the transition to a low-carbon society.

2.4.3.2 Due to the current success of the offshore wind industry and future potential, The Offshore Wind Sector Deal (2019) was introduced. This included sector wide targets such as generating 30 gigawatts (GW) by 2030 which was subsequently increased to 50 GW by 2030 by the Spring 2022 UK Government Energy Security Strategy (HM Government, 2022). The Energy Security Strategy also includes a target of 5 GW of floating offshore wind by 2030. The UK Government's 'Powering up Britain' plans set out how the UK will provide energy security, seize the economic opportunities of the transition to net zero, and deliver on net zero commitments.

2.4.3.3 The UK Government in collaboration with the Northern Ireland Executive, the Scottish Government and the Welsh Assembly Government implemented the UK Marine Policy Statement in 2011 which enables an integrated approach to marine planning throughout the UK. This policy also describes a high-level framework that must be used when preparing marine plans and making decisions which have an impact on the marine environment. Furthermore, this policy also states the requirements for marine plans in UK waters to be developed whilst adhering to environmental, social and economic objectives.

2.4.4 Scotland

2.4.4.1 The Planning (Scotland) Act 2019 was passed by Scottish Parliament in June 2019, therefore superseding the previous Town and Country Planning (Scotland) Act 2017. The 2019 Act is the primary piece of planning legislation in Scotland. The legislation aims to strengthen the contribution planning can make to inclusive growth to deliver infrastructure and other development. The Planning (Scotland) Act 2019 contains a broad range of changes to the overall planning system, and most notably the inclusion of National Planning Framework 4 (NPF4) which amalgamates the previous NPF3 and the Scottish Planning Policy (SPP) documents to a singular condensed version. The Act also contains a strong emphasis on meeting targets

relation to the reduction of emissions of greenhouse gases in association with the Climate Change (Scotland) Act 2009.

- 2.4.4.2 The Electricity Generation Policy Statement (EGPS) 2013 analyses how Scotland generates electricity as well as the changes required to meet Scottish Government targets (Scottish Government, 2013). The Scottish Government aims to deliver a secure electricity supply that is affordable to its users, decarbonised by 2030 and provides a large economic benefit and serves as a competitive advantage for Scotland.
- 2.4.4.3 Scotland's Offshore Wind Policy Statement outlines the goals to use offshore wind as a means of working towards achieving net-zero by 2045. This policy expands upon the Scottish Energy Strategy 2017 and discusses the huge economic opportunities associated with floating offshore wind developments (Scottish Government, 2020).
- 2.4.4.4 The Offshore Wind Policy Statement written by Marine Scotland (now Marine Directorate) confirmed the intention of the Scottish Government to make sure offshore wind has an important role in decarbonisation and achieving net-zero. This suggested up to 11 GW could be achieved in Scottish waters alone by 2030 (Scottish Government, 2020).
- 2.4.4.5 The Scottish Government Draft Energy Strategy and Just Transition Plan presents a vision where Scotland's future energy system *'will deliver maximum benefits for Scotland, enabling us to... deliver a just transition for our workers, businesses, communities and regions.'* The Draft Just Transition Plan has a clear objective of *'boosting jobs, our domestic supply chain and manufacturing capabilities.'* The draft strategy specifically mentions the Innovation and Targeted Oil and Gas Decarbonisation (INTOG) leasing round as key to supporting the scale up of offshore renewable energy in Scotland. The Scottish Government's National Strategy for Economic Transformation also includes supporting Scotland's net zero supply chains as a priority.
- 2.4.4.6 One of the INTOG leasing round's central objectives for its innovation stream was *'to further develop Scotland as a destination for innovation and technical development which will lead to risk reductions and supply chain opportunity.'* The need for small scale floating innovation projects to support the scaling up of floating offshore wind has also been recognised in the recent Investor Panel Recommendations to the Scottish Government which recommended *'A plan needs to be developed for the scaling up of a floating offshore wind pilot scheme to assist in developing other sites at scale. This can leverage learning from the innovation projects emerging from the existing INTOG leasing round to start a practical conversation on the floating offshore wind supply chain opportunity for Scotland.'* The Scottish Government's response included a commitment to working through the Scottish Wind Energy Council to *'leverage innovation opportunity from the INTOG leasing round to ensure maximum benefit to the Scottish supply chain and the pipeline of projects which will rely on it'*.
- 2.4.4.7 Through its Draft Energy Strategy and Just Transition Plan, Scottish Government is consulting on increasing this target to reflect the scale of ambition of the ScotWind leasing round and potentially including a floating specific target. The consultation closed in May 2023 and we await the Scottish Government's response.

2.4.5 Scotland Offshore Wind Route Map

- 2.4.5.1 Scotland's Offshore Wind Route Map was published in 2010 by The Offshore Wind Industry Group (OWIG) which is comprised of industry, governmental and public sector representatives. This document details a methodology to identifying opportunities, recommendations and challenges for the offshore wind industry (Scottish Government, 2010).

2.4.5.2 Scotland's Offshore Wind Route Map also highlights that offshore wind will make a larger contribution towards achieving Scotland's target of 50% of electricity consumption originating from renewables by 2030 and achieving net-zero by 2050 (Scottish Government, 2010).

2.4.6 Marine Plans

2.4.6.1 The Scottish Government published the National Marine Plan (NMP) in March 2015. The NMP outlines strategic policies to enable the sustainable development of Marine Resources in Scotland out to 200 nm (nautical miles). The NMP is compatible with the UK Marine Policy Statement and current UK marine plans (Scottish Government, 2015).

2.4.6.2 The NMP sets out strategic policies for the development and use of Scotland's marine area from MHWS out to 200 nm. The Scottish Government is now working on the NMP2, which will update and replace the existing NMP. The Marine Directorate have been focussing on the development of high-level objectives of NMP2 in consultation with stakeholders. The Scottish Government's public consultation the NMP2 Strategic Environmental Assessment (SEA) Scoping Report ran from 25 September to 30 October 2023. This forms the first phase of the strategic environmental assessment for NMP2.

2.4.6.3 A draft NMP2 is currently scheduled for spring-summer 2024, and adoption in late 2025 following UK and Scottish Parliament scrutiny.

2.4.6.4 The Sectoral Marine Plan (SMP) for Offshore Wind Energy was introduced in 2011 with the Draft Sectoral Marine Plan for Offshore Wind, Wave and Tidal energy in Scottish waters being published by Marine Scotland (now Marine Directorate) in 2013. This identified options for potential large scale (greater than 100 megawatts (MW)) offshore wind developments (Scottish Government, 2011).

2.4.6.5 In October 2020, the final SMP was published which builds upon the work conducted in the development of the 2011 and 2013 plans. The 2020 SMP also integrates newer policy, regulatory, technological and market developments to create a new strategic planning process.

2.4.6.6 The SMP aims to contribute towards achieving the climate change policy objectives and targets established by the Scottish and UK Governments by using spatial strategy to inform the seabed licensing process for commercial offshore wind developments in Scottish waters. The SMP also aims to maximise the benefits for Scotland's communities and people whilst keeping adverse effects on other marine users, economic sectors and the environment to a minimum. The SMP identified 15 final plan options in four regions in Scotland that have the potential to generate several GW of renewable energy. Furthermore, the SMP has been developed according to the strategic aims of the NMP which addresses the potential interactions between renewable energy development and other marine users.

2.4.6.7 The Scottish Government is currently undertaking an Iterative Plan Review of the SMP to allow for new evidence to be incorporated into the plan. The updated SMP will provide the planning framework for both the ScotWind and INTOG leasing rounds. The Marine Directorate plans to consult on a draft updated SMP in Autumn 2024 and for the final plan to be adopted in Spring 2025.

2.4.6.8 Within Scottish Marine Regions which have an established Marine Planning Partnership, Regional Marine Plans (RMPs) are being developed. The planning competence of these partnerships covers out to 12 nm and

eleven Scottish Marine Regions have been created. Additionally, RMPs need to be developed whilst adhering to the NMP unless otherwise indicated.

2.5 Environmental Policy and Legislation

2.5.1 Marine Strategy Regulations

2.5.1.1 The Marine Strategy Regulations (2010) provide a framework for the achievement and maintenance of 'good environmental status' (GES) in the UK's marine environment. This also protects the marine environment for which marine economic and social activities depend on it.

2.5.1.2 The UK Marine Strategy Part Three describes the range of measurements the UK will use until 2027 to enable progression towards GES. This strategy sets out the need to assess, monitor and establish measures to achieve or maintain GES in UK waters. Furthermore, the aims of the Marine Strategy Regulations (2010) have been integrated into the NMP of Scotland.

2.5.2 The Convention on Biological Diversity

2.5.2.1 The UK signed the Convention of Biological Diversity (CBD) along with 168 other signatories which came into force in 1993. The CBD has three main objectives.

- Biological diversity conservation;
- The use of biological diversity in a sustainable way; and
- Sharing the benefits from the utilisation of genetic resources in a fair and equitable manner.

2.5.2.2 The CBD recognises that biological diversity conservation is "a common concern for humankind" and it is a key consideration during the development process. Additionally, the CBD includes every type of ecosystem, species and genetic resource. There are also several important United Nations (UN) and EU initiatives with the purpose of contributing towards achieving the objectives of the CBD. This includes the Bern and Bonn conventions as well as the Natura 2000 network.

2.5.2.3 On 7 September 2023, and following consultation on a draft strategy in 2022, the Scottish Government published its updated version of the Scottish Biodiversity Strategy to 2045. This updated strategy paper sets an ambition for Scotland to be Nature Positive by 2030, and to have restored and regenerated biodiversity across the country by 2045. The Biodiversity Strategy sets objectives and actions to deliver these goals. The Biodiversity Strategy confirms that the Scottish Government will deliver the strategy's vision by putting in place a Strategic Delivery Framework "to provide the enabling conditions for success".

2.5.2.4 The Scottish Government's consultation "Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity" has now been launched and is divided into two parts:

- Part A is consulting on the final draft of the Scottish Biodiversity Strategy, the first five-year Delivery Plan, and policy frameworks for Nature Networks and protecting at least 30% of lands and seas by 2030.
- Part B seeks views on proposals related to tackling the nature emergency that will require legislation, specifically statutory targets for nature restoration and changes to National Parks legislation.

2.5.2.5 The consultation closed on 14 December 2023; the Government's response to the consultation responses has not been issued yet.

2.5.3 Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)

2.5.3.1 The Ramsar Convention is a treaty which provides the framework for conserving and using wetlands and their resources appropriately. This Treaty was signed by the UK in 1976. There is a range of criteria used to assess a site for designation as a Ramsar Site including if a wetland supports 20,000 water birds and/or supports at least 1% of the individuals in a population of one species or subspecies of waterbird.

2.5.4 Habitats Directive

2.5.4.1 The aim of The Habitats Directive 92/43/EEC is the conservation of natural habitats, flora and fauna as well as the protection of biodiversity within the EU. Member states are required to commit to the maintenance or restoration of natural habitats and wild species, including those specific habitats listed in Annex I and species listed in Annex II of the Directive. The Habitats Directive allows for the designation of Special Area of Conservation (SAC) under Article 4, which are intended to protect important habitats and species (though not birds).

2.5.4.2 Article 6(3) of the Habitats Regulations requires that any plan or project likely to have a significant effect on a designated site is subject to an Appropriate Assessment (AA) to review the implications for the site concerned. This sets out the need to screen each proposed plan or project for likely significant effects (LSE) (unless the proposed plan or project is directly connected with or necessary to the management of the site). LSE on designated sites must be considered for both the individual proposed project and any other plan or project capable of affecting the site concerned in-combination.

2.5.4.3 Habitats Regulations Appraisal (HRA) Screening is undertaken using a Source-Pathway-Receptor risk assessment model and does not consider potential mitigation measures. Should LSE be deemed to be possible to occur on a designated site(s), an AA is then required to consider the potential for adverse effects on the integrity of designated sites and can take account of any mitigation or impact reduction measures.

2.5.4.4 Site integrity is linked to the ecological requirements of the habitat or species protected under the designated sites, for which the overarching objective of the Habitats Directive details that they should be maintained or restored to favourable conservation status.

2.5.4.5 Where adverse effects on the integrity of the site(s) concerned cannot be ruled out, Article 6(4) of the Habitats Directive provides an ability for a limited derogation from the requirements of Article 6(3) for plans or projects to be granted subject to the relevant tests being met. Provided no alternative solutions are identified, projects that result in an adverse effect on site integrity may be able to proceed for Imperative Reasons Of Overriding Public Interest (IROPI). Compensatory measures will be required in these cases to ensure the overall coherence of the network of designated sites.

2.5.4.6 The requirements of Article 6(3) and 6(4) of the Habitats Directive are typically set out by developers in a HRA submitted within a consent application for the Salamander Project, and not within alongside the EIAR. The requirements of Article 6(3) and Article 6(4) of the Habitats Directive differ significantly to those of the

EIA Directive. However, as previously detailed, the AA conclusions should be taken account within the EIA procedure, according to Article 5(2) of the EIA Directive.

2.5.5 Birds Directive

2.5.5.1 The Birds Directive 2009/147/EC seeks to achieve the protection of wild birds throughout the EU and allows for the designation of Special Protection Area (SPA) under Article 4, which are selected under a targeted protection regime for the most rare and vulnerable bird species listed in Annex I. These SPAs are subject to the same protection requirements as detailed in the Habitats Directive under Article 6(3) and explained above.

2.5.5.2 Under Article 5 of the Birds Directive, Member States must ensure that all species of wild birds are protected and are not harmed as a result of activities detailed in that Article. There is a conditional and exceptional derogation procedure under Article 9. There is a requirement within the EIA procedure that any implications of a proposed project on wild and migratory bird species, and any potential derogation from the strict requirements of the Directive, are required to be assessed.

2.5.6 Habitats and Species Regulations

2.5.6.1 The Habitats and Birds Directives are transposed into Scottish law under the following with these regulations applied in context of Section 36 applications:

- The Conservation of Habitats and Species Regulations 2017;
- The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended); and
- The Conservation of Offshore Marine Habitats and Species Regulations 2017 (applies to Marine Licence and Section 36 Consent applications within Scottish waters beyond 12 nm).

2.5.6.2 The European Sites, or Natura 2000, are known as National Site Network sites within the UK, reflecting the intention of the UK Government that all designated sites across the UK form part of a coherent network.

2.5.6.3 Ramsar sites, designated under international obligations (and detailed in Section 2.5.4), often have significant overlap with SPAs, and it is UK policy that any impacts to Ramsar sites are assessed under the same requirements as SPAs and SACs. They are therefore assessed within the same HRA.

2.5.7 Marine (Scotland) Act 2010

2.5.7.1 Furthermore, Scotland designates Nature Conservation Marine Protected Area (MPA) within 12 nm under the Marine (Scotland) Act 2010. These protect biodiversity and heritage, with an emphasis on protected features such as species, habitats and geomorphological features. If a project could potentially have an effect on an MPA's conservation objectives, the EIAR must have the required information to support an MPA assessment. The MPA assessment is conducted by the Marine Directorate on behalf of the Scottish Ministers for Marine Licences and Section 36 consents in consultation with NatureScot / Joint Nature Conservation Committee (JNCC).

2.6 Consenting Regime

2.6.1 Overview

2.6.1.1 The overall Salamander Project is intended to deliver a combined generating and battery storage capacity of greater than 50 MW and the generating wind turbine array is located in Scottish offshore waters (12 nm to 200 nm) within the Scottish Renewable Energy Zone (REZ).

2.6.1.2 This Legislative Context and Regulatory Requirements chapter relates to the Offshore Development Area of the Salamander Project and therefore concerns the development of the wind turbine array in Scottish offshore waters (12 nm to 200 nm) within the Scottish REZ. Therefore, the following consents and Marine Licences are required:

- Section 36 Consent under the Electricity Act 1989 for the wind farm generating station; and
- A Marine Licence under the Marine and Coastal Access Act 2009 for the offshore works (12 – 200 nm in the REZ) and under the Marine (Scotland) Act 2010 for the works within 12 nm of the coast.

2.6.1.3 The consent and licensing requirements are described below. If further pre-construction licences are needed these will be discussed and agreed with the relevant licensing authority during the pre-construction phase.

2.6.2 Section 36 of the Electricity Act 1989

2.6.2.1 In order to construct and operate an electricity generating station with a capacity greater than 50 MW in the Scottish REZ, a Section 36 Consent of the Electricity Act 1989 is required. An application for a Section 36 Consent is made to MD-LOT on behalf of the Scottish Ministers.

2.6.3 Marine Licences

2.6.3.1 The Marine (Scotland) Act 2010 is applicable to Scottish Territorial Waters (between 0 and 12 nm from MHWS) and the Marine and Coastal Access Act 2009 for offshore works (between 12 nm and 200 nm). These Acts set out a range of activities for which a Marine Licence is required. A Marine Licence is needed to build, change or enhance any works, or place an object in or over the sea, or on or beneath the seabed. For the Salamander Project, this application for a Marine Licence will be required to deposit the required WTG anchors and mooring lines, to install the Offshore Export Cable(s) in/on the seabed and associated infrastructure. A Marine Licence will also be required for the maintenance works of the Offshore Development. These applications for Marine Licences will be made to MD-LOT and the EIAR is produced in accordance with the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 as amended and the Marine Works (Environmental Impact Assessment) Regulations 2007. Consent for any required Unexploded Ordnance (UXO) removal will be sought in a future Marine Licence application when geophysical data of a suitable spatial resolution is available to identify and quantify UXO.

2.6.4 Pre-Application Consultation

2.6.4.1 Pre-Application Consultation (PAC) is required for developments of a specific scale or consisting of specific works as per The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 and Sections 22 to 24 of the Marine (Scotland) Act 2010. Pre-application discussions with both Scottish Ministers and relevant stakeholders are encouraged at the early stages of a development proposal, under Section 36 of the Electricity Act 1989. The process of the PAC provides opportunities to receive feedback from the public and third sector organisations that can then be addressed in the application and supporting EIAR. The

stakeholder engagement and public consultation carried out in relation to the Salamander Project is set out in **Volume ER.A.2, Chapter 5: Stakeholder Consultation**.

2.6.5 Additional Permits and Licence Requirements

2.6.5.1 For the Offshore Development, further permits and licences may be required. These fall under and include:

- Marine Licences for enabling works and ancillary activities under the Marine (Scotland) Act 2010 and Marine and Coastal Access Act 2009;
- European Protected Species Licences under the Conservation (Natural Habitats, &c) Regulations 1994;
- Safety Zones under the Energy Act 2004; and
- A Marine Licence for the detonation of any UXO which may be identified as requiring clearance in pre-construction surveys under the Marine (Scotland) Act 2010 and Marine Coastal Access Act 2009.

2.6.5.2 All relevant permits and licence requirements will be complied with. Additionally, extensive consultation will ensure that all requirements are identified and addressed.

2.7 References

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