Bowdun Offshore Wind Farm

Habitats Regulations Appraisal: Applicant's Case for Derogation

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Glossary

Defined Term	Definition
Air Gap	The distance between the sea surface and the blade tip. This can be measured from Highest Astronomical Tide (HAT), Lowest Astronomical Tide (LAT) and Mean High Water Springs (MHWS). Regardless of parameter used, conversion factors are applied to ensure the distance will always be the same. Important parameter in Collision Risk Modelling (CRM).
Applicant (the)	Bowdun Offshore Wind Farm Limited (BOWFL).
Appropriate Assessment (AA)	An assessment to determine the implications of a plan or project for a European Site in view of that site's conservation objectives. An Appropriate Assessment forms part of the Habitats Regulations Appraisal (HRA) and is required when a plan or project (either alone or in-combination with other plans or projects) is likely to have a significant adverse effect on a European Site.
Array Area	The Array Area is the area in which the Offshore Generation Assets will be located.
Bowdun Offshore Wind Farm Limited (BOWFL)	A Special Purpose Vehicle (SPV) (legal entity) for the purpose of developing the Project. BOWFL are the Applicant for the Offshore Application.
Barrier Effects	The effect by which a bird or bat has to make longer transits between a breeding or roosting location to an area of foraging. An Offshore Wind Farm (OWF) could act as a barrier in which a species has to fly around to reach the other side, some species are unlikely to travel through or over.
Carbon Budget	The maximum amount of carbon emissions that can be released into the atmosphere over a set period of time. The goal of Carbon Budgets is to limit global warming to a specific level.
Collision	The effect by which a bird may be impacted by direct collision. Birds passing through an OWF are at risk of colliding with the Wind Turbines (moving and stationary parts).
Contracts for Difference (CfD)	The UK Government's main mechanism for supporting low-carbon electricity generation.
Critical National Priority infrastructure	Nationally significant low carbon infrastructure which is identified as a critical national priority (CNP) in NPS EN-1. Includes *inter alia* offshore wind farms.
Crown Estate Scotland (CES)	Public corporation accountable to Scottish Government, responsible for the management of land and property in Scotland owned by the monarch.
Displacement	An impact that occurs when an animal is forced away from an area of habitual usage. This can be temporary (i.e. a ship moving) or permanent (i.e. the placement of offshore infrastructure).
Effect	Term used to express the consequence of an impact i.e. the result of change or changes on specific environmental resources or receptors. The significance of an effect is determined by correlating the magnitude of the impact with the importance, or sensitivity of the receptor or resource in accordance with defined significance criteria.

Defined Term	Definition
Environmental Impact Assessment (EIA)	Process for the assessment of the likely significant environmental effects of a project on the physical, biological, and human environment during construction, Operations and Maintenance (O&M) and decommissioning.
Environmental Impact Assessment Regulations (EIA Regulations)	Terminology used in this Offshore EIA Report to refer to three sets of regulations: • The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017; • The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017; and • The Marine Works (Environmental Impact Assessment) Regulations 2007.
European Sites	This term recognises Special Protection Areas (SPAs) and SACs which protect species and habitats shared across Europe and were originally designated under European legislation.
Exclusive Economic Zone (EEZ)	An area from the outer limit of the territorial sea up to 200 nm from the coastal baseline, over which a sovereign state has rights regarding marine resources.
Habitats Regulations	Refers to: the Conservation (Natural Habitats, &c.) Regulations 1994; the Conservation of Habitats and Species Regulations 2017; and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (in each case as amended).
Habitats Regulations Appraisal (HRA)	An assessment carried out under the Habitats Regulations to determine if a plan or project could adversely affect the integrity of a European Site.
Impact	A change caused by an action that occurs during a project's lifetime.
Likely Significant Effect (LSE)	An effect that has the potential to occur as a result of the Proposed Development as determined by the AA.
Marine Directorate (MD)	The Marine Directorate of the Scottish Government, formerly known as Marine Scotland. The planning and licensing authority for Scotland's seas and custodian of Scotland's National Marine Plan (NMP). The Marine Directorate - Licensing and Operations Team (MD-LOT) are specifically responsible for managing Section 36 Consent and Marine Licence Applications seaward of MHWS.
Marine Licence	A Marine Licence permits the undertaking of different activities in the marine environment, including construction, the deposition or removal of substances or objects, and dredging. The Marine (Scotland) Act 2010 requires Marine Licences to be obtained for licensable activities taking place within Scottish Territorial Sea (MHWS to 12 nm). The Marine and Coastal Access Act 2009 requires a Marine Licence to be obtained for licensable marine activities within the Scottish offshore region (12 nm – 200 nm).
Marine (Scotland) Act 2010	Legislation that sets a framework to manage the competing demands made on marine resources within Scottish seas.
Maximum Design Scenario (MDS)	The scenario within the design envelope likely to result in the greatest impact on a particular topic receptor, and therefore the one that should be assessed for that topic receptor.

Defined Term	Definition
Mean High Water Springs (MHWS)	The average tidal height throughout the year of two successive high waters during those periods of 24 hours when the range of the tide is at its greatest.
Mitigation	Measures to avoid, prevent, reduce or control effects on the environment. See also definitions for Embedded Mitigation and Additional Mitigation.
National Grid	The national electricity transmission network.
National Site Network	The network of European Sites in the UK. Prior to the UK's exit from the EU and the coming into force of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 these sites formed part of the EU ecological network known as "Natura 2000".
Offshore Application	Term used to refer to the applications associated with the Proposed Development. The Applicant will apply for: • A Section 36 Consent under the Electricity Act 1989; and • Marine Licence(s) under Marine Scotland Act 2010 and Marine and Coastal Access Act 2009.
Offshore Generation Assets	The infrastructure of the Proposed Development required to generate electricity comprising of the Wind Turbines, Wind Turbine foundations and associated infrastructure e.g. IACs.
Offshore Infrastructure	All of the Offshore Infrastructure associated with the Proposed Development that is located seaward of MHWS, comprising the Offshore Generation Assets and the Offshore Transmission Assets.
Offshore Substation Platform(s) (OSPs)	OSPs comprise the support structure, topside and electrical components used for collecting and/or converting electricity generated by the Wind Turbines for transmission by the Offshore Export Cables.
Operation and Maintenance (O&M)	The phase of the Proposed Development following completion of construction. This phase of development includes routine inspections, repairs and replacement of infrastructure and equipment (including interconnector and IACs), scour protection replenishment or replacement, major component replacement, painting and/or other coating works, removal of marine growth, replacement of access ladders and geophysical surveys.
Option to Lease Agreement (OLA)	An agreement between CES and a developer, permitting the future development of offshore wind within an agreed area.
Plan Option Area (POA)	A location identified in the SMP as a preferred area for commercial scale offshore wind development.
Project (the)	An overarching term for the Bowdun Offshore Wind Farm (Bowdun OWF) comprising the offshore and onshore infrastructure required to generate and transmit electricity from the Array Area to the onshore Grid Connection Point (GCP). The Project includes the Offshore Generation Assets, the Offshore Transmission Assets and the Onshore Infrastructure.
Project Design Envelope (PDE)	A description of the range of possible elements that make up the design options for the Proposed Development under consideration when the exact engineering parameters are not yet known.

Defined Term	Definition
Proposed Development	Term used to define the Offshore Infrastructure associated with the Project seaward of MHWS for which consent is being sought. Further details of the parameters are included in Volume 1, Chapter 3: Project Description.
Qualifying Features	The features for which a European Site has been officially designated to protect.
Report to Inform Appropriate Assessment (RIAA)	The RIAA provides detailed information to support the process of Appropriate Assessment (undertaken by the competent authority) as part of the HRA, which evaluates the potential impacts of a project or plan on European Sites.
Rochdale Envelope (also known as Project Design Envelope)	Inter-changeable with PDE.
Scottish Ministers (the)	The decision makers with regard to Marine Licence(s) and Section 36 Consent applications in Scottish Offshore Waters.
Scottish Offshore Waters	These include territorial waters extending 12 nautical miles from the low water line along the coast, waters as defined in the Scottish Adjacent Waters Boundaries Order 1999, the Scottish Zone of the UK Exclusive Economic Zone (EEZ), and waters included in the Scottish Offshore Marine Region.
Scottish Territorial Sea	The territorial waters of Scotland that extend out to 12 nm, as defined by the Marine (Scotland) Act 2010.
ScotWind Leasing Round	A seabed leasing round run by CES to grant property rights for the seabed in Scottish waters for new commercial scale offshore wind project development. ScotWind Leasing must be sited within POA of the SMP.
Section 36 Consent	Scottish Ministers' consent under Section 36 of the Electricity Act 1989 required for the generating assets of the Proposed Development.
Sectoral Marine Plan for Offshore Wind Energy (SMP)	A plan developed by the Scottish Government which provide the strategically planned spatial footprint for offshore wind development in Scotland.
Special Areas of Conservation (SACs)	SACs are areas designated for the conservation of certain plant and animal species listed in the Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.
Special Protection Areas (SPAs)	SPAs are sites that are designated to protect rare or vulnerable birds (as listed on Annex I of the Directive 2009/147/EC on the conservation of wild birds), as well as regularly occurring migratory species.
Thistle Wind Partners (TWP)	The company established for the development of the Project.
Wind Turbines	Structures comprising of a tubular tower, rotor blades, and a nacelle which houses the Wind Turbine generator.

Acronyms

Acronym	Definition
AA	Appropriate Assessment
AEOSI	Adverse Effect on Site Integrity
BOWFL	Bowdun Offshore Wind Farm Limited
CAPEX	Capital Expenditure
CCC	Climate Change Committee
CES	Crown Estate Scotland
CfD	Contracts for Difference
CJEU	Court of Justic of the European Union
CNP	Critical National Priority infrastructure
CO_2	Carbon Dioxide
DEFRA	Department for Environment Food and Rural Affairs
DESNZ	Department for Energy Security and Net Zero
EC	European Commission
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EU	European Union
FTE	Full-time Equivalent
GBP	Great British Pound
GHG	Greenhouse Gas
GVA	Gross Value Added
HRA	Habitats Regulations Assessment
IAC	Inter-Array Cable
INTOG	Innovation and Targeted Oil and Gas
IPCC	Intergovernmental Panel on Climate Change
IROPI	Imperative Reasons of Overriding Public Interest
LAT	Lowest Astronomical Tide
LSE	Likely Significant Effects
MD	Marine Directorate
MDS	Maximum Design Scenario
MD-LOT	Marine Directorate-Licensing Operations Team
MHWS	Mean High Water Spring
NDC	Nationally Determined Contributions
NMP	National Marine Plans
NPF4	National Planning Framework 4
NPS	National Policy Statement
OLA	Option Lease Agreement
OSP	Offshore Substation Platform

Acronym	Definition
OWEPS	Offshore Wind Energy Policy Statement
OWF	Offshore Wind Farm
O&M	Operation and Maintenance
PDE	Project Design Envelope
POA	Plan Option Area
RIAA	Report to Inform Appropriate Assessment
SAC	Special Area of Conservation
SCDS	Supply Chain Development Statement
SofS	Secretary of State (UK)
SMP	Sectoral Marine Plan for Offshore Wind Energy
SNH	Scottish Natural Heritage, referred to as NatureScot
SPA	Special Protection Area
TCE	The Crown Estate
TWP	Thistle Wind Partners Limited
UK	United Kingdom
UXO	Unexploded Ordinance

Table of Units

Units	Definition
$CO2_e$	Carbon Dioxide Equivalent
gCO2/kWh	Grams of Carbon Dioxide per Kilowatt-Hour
GW	GigaWatt
km	Kilometre
km^2	Square kilometre
m	Metre
mLAT	Metres above/below Lowest Astronomical Tide
MW	MegaWatt
nm	Nautical mile
$tCO2_e$	Tonnes of Carbon Dioxide Equivalent
°	Degree
°C	Degree Celsius
£	GBP
%	Percent

1 Introduction

1.1.1 This Derogation Case has been prepared in connection with the Offshore Application for Section 36 Consent and Marine Licences for the Offshore Infrastructure (the Proposed Development) of the Bowdun Offshore Wind Farm Project (the Project) and provides the information required by Scottish Ministers, as competent authority under the Habitats Regulations (hereafter defined), to discharge Stage 3 (derogation) of the Habitats Regulations Appraisal (HRA) process.

1.2 The Proposed Development

1.2.1 The Proposed Development consists of the following Offshore Infrastructure:

- Wind Turbines;
- Wind Turbine foundations (fixed bottom);
- Offshore Substation Platforms (OSPs);
- OSP foundations (fixed bottom);
- Offshore cables (Inter-Array Cables (IAC), Interconnector Cables, and Offshore Export Cables); and
- Scour protection, cable protection and utility crossings.

1.2.2 A detailed project description for the Proposed Development is included in Offshore EIA Report Volume 1, Chapter 3: Project Description and the following summary is limited to elements pertinent to this Derogation Case, namely the Offshore Generation Assets.

1.2.3 The Array Area for the Proposed Development, which at its closest point lies approximately 38 km off the east coast of the Aberdeenshire, is within an area known as Plan Option Area (POA) 'E3'. The E3 POA is an area identified for offshore wind farm (OWF) development in the Sectoral Marine Plan for Offshore Wind Energy (2020) (SMP).

1.2.4 Bowdun Offshore Wind Farm Limited (BOWFL) (the Applicant) was awarded an Option to Lease Agreement (OLA) to develop the Project within the E3 POA in January 2022 as part of Crown Estate Scotland's (CES) ScotWind Leasing Round.

1.2.5 The Array Area extends to 187 km^2. Within the Array Area, a maximum of 67 Wind Turbines, using fixed foundations, would be installed. The maximum rotor blade diameter will be 326 m, with a maximum blade clearance of up to 359.12 m above Lowest Astronomical Tide (LAT) and a blade clearance (Air Gap) of 33.12 m above LAT.

1.2.6 The overall generating capacity for the Proposed Development is estimated to be approximately 1 GW, depending on the final number, model and capacity of the Wind Turbines selected from within the parameters of the Project Design Envelope (PDE).

1.2.7 The Project is expected to connect to the National Grid at a new substation, known as 'Hurlie', to be constructed by SSEN in the Fetteresso Forest near the settlement of Stonehaven, with a 2035 connection date. Subject to the grant of the necessary consents, it is anticipated offshore site preparation activity would commence in 2031 and Wind Turbine commissioning be completed in 2036.

1.2.8 Once operational, the Proposed Development is anticipated to operate and provide low carbon electricity for a period of 30 years.

1.3 Requirement for Derogation

1.3.1 The Applicant's Report to Inform Appropriate Assessment (RIAA) concludes that there is the potential for adverse effects on site integrity (AEOSI), as a result of the O&M of the Proposed Development (specifically the Offshore Generation Assets) in-combination with other plans or projects, for the Special Protection Areas (SPA) and qualifying species of the UK National Site Network identified in Table 1 below.

1.3.2 Detailed information on the nature of the impacts and quantification of these adverse effects is provided in the Applicant's RIAA Part 3 (SPAs). For all other European Sites and features assessed in the RIAA Part 2 (SACs) and RIAA Part 3 (SPAs), a conclusion of no AEOSI is reached by the Applicant.

Table 1. European Sites and Species Relevant to Derogation Case

European Site	Qualifying Species	Impact	Phase
Farne Islands SPA	Kittiwake	Collision risk[1] and displacement/ barrier effect[2]	O&M
North Caithness SPA			
Troup, Pennan and Lion's Head SPA			
West Westray SPA			
East Caithness Cliffs SPA	Kittiwake	Collision risk and displacement/ barrier effect	O&M
	Razorbill	Displacement/barrier effect	
Forth Islands SPA	Kittiwake	Collision risk and displacement/ barrier effect	O&M
	Gannet		
	Puffin	Displacement/barrier effect	
	Razorbill		
Buchan Ness to Collieston Coast SPA	Kittiwake	Collision risk and displacement/ barrier effect	O&M
	Guillemot	Displacement/barrier effect	

[1] In Table 1 collision risk relates to the risk of bird mortality as a result of colliding with rotor blades.
[2] Distributional responses, displacement and barrier effects from Offshore Infrastructure.

European Site	Qualifying Species	Impact	Phase
St Abb's Head to Fast Castle SPA	Kittiwake	Collision risk and displacement/ barrier effect	O&M
	Razorbill	Displacement/barrier effect	
Flamborough and Filey Coast SPA	Razorbill	Displacement/barrier effect	O&M
	Kittiwake	Collision risk and displacement/ barrier effect	
	Gannet		
Fowlsheugh SPA	Herring gull	Collision risk	O&M
	Kittiwake	Collision risk and displacement/ barrier effect	
	Guillemot	Displacement/barrier effect	
	Razorbill		

1.3.3 Given the RIAA findings in respect of the above SPAs, the Scottish Ministers can only authorise the Proposed Development if the HRA Stage 3 (derogation) requirements of the Habitats Regulations (hereafter defined) are met. The legal framework and HRA Stage 3 derogation process is summarised in Section 2 below.

1.3.4 This Derogation Case provides the necessary information to satisfy the legal requirements for an HRA derogation, to enable the Scottish Ministers to grant consent notwithstanding the risks of AEOSI identified. In summary, for reasons set out in following sections, this Derogation Case accordingly:

- Identifies the primary objectives of the Proposed Development.
- Considers whether there are alternative solutions to the Proposed Development.
- Considers whether there are Imperative Reasons of Overriding Public Interest (IROPI) in the Proposed Development proceeding.
- Identifies compensatory measures that can be secured to ensure the overall coherence of the National Site Network.

1.4 Document Structure

1.4.1 This Derogation Case is ordered as follows:

- Section 1: Introduction – Introduces the Derogation Case, including its purpose, structure and where supporting information can be found.
- Section 2: Legal Framework, Policy and Guidance – Sets out the legislation underpinning the HRA process, as well as policy and guidance for HRA derogations and examples set by other offshore wind projects.

- Section 3: The Need for the Proposed Development – Establishes why the Proposed Development is required and the core objectives it serves.
- Section 4: No Alternative Solutions – Considers whether there are any feasible alternative solutions to the Proposed Development.
- Section 5: Imperative Reasons of Overriding Public Interest – Identifies the public benefits of the Proposed Development and explains why they are imperative reasons sufficient to override the identified adverse effects on European Sites.
- Section 6: Compensatory Measures – Outlines the compensatory measures identified, the ecological evidence and outline compensation plans supporting the measures, and how they can be adequately secured.
- Section 7: Conclusion – Summarises the Applicant's overall position relating to the basis for a derogation under the Habitats Regulations.

2 Legal Framework, Policy and Guidance

2.1 The Habitats Regulations

2.1.1 The legal requirements applicable to this Derogation Case are contained in the following Habitats Regulations:

- The Conservation of Offshore Marine Habitats and Species Regulations 2017, which apply in UK waters beyond 12 nm (including Scottish offshore waters);
- The Conservation of Habitats and Species Regulations 2017, which apply to applications for Section 36 Consents in Scotland; and
- The Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations 1994), which apply in Scotland and its territorial sea.

2.1.2 In this Derogation Case, these regulations are referred to collectively as the Habitats Regulations. Where a specific provision of this legislation is cited in this report, for brevity reference is made only to the applicable provision of The Conservation of Offshore Marine Habitats and Species Regulations 2017. There is no material difference between the derogation provisions of the different regulations.

2.1.3 The UK and Scottish Governments are in the process of implementing amendments to the Habitats Regulations using powers contained in the Energy Act 2023. When in force[3], The Conservation of Habitats and Species (Offshore Wind) (Amendment etc.) Regulations 2026 (UK level) and the Conservation of Habitats and Species (Offshore Wind) (Miscellaneous Amendments) (Scotland) Regulations 2026 (Scottish inshore) will enable a wider range of compensatory measures (non like-for-like) for the impacts of offshore wind developments than previously possible. These 2026 Regulations do not alter the legal framework applicable to the legal tests which are the focus of this document.

2.2 The HRA Stages

2.2.1 The Habitats Regulations set a process, known as HRA, which must be followed before authorisation may be given for any proposed plan or project which may negatively affect a European Site. The HRA process is described in detail in the Applicant's RIAA Part 1 - Introduction (TWP-BOW-RPS-ENV-REP-00013) and is not repeated here. In summary, it involves three principal stages, as follows:

- Stage 1: Screening - determine any Likely Significant Effects (LSE) on European Site(s);
- Stage 2: If LSE cannot be excluded, undertake an Appropriate Assessment (AA) to determine if there would be any AEOSI for European Site(s); and
- Stage 3: If the AA cannot exclude the risk of AEOSI, consider if the requirements for an HRA derogation are met.

[3] The UK 2026 Regulations are due to come into force on 21 May 2026.

2.2.2 If the AA at Stage 2 enables the competent authority to conclude, beyond reasonable scientific doubt, no AEOSI, consent can be granted. If any AEOSI is identified (or cannot be excluded), consent must not be granted unless the applicable legal tests for a derogation (Stage 3) are met.

2.2.3 In the context of applications for Section 36 Consent and Marine Licences in Scottish Offshore Waters, it is the legal responsibility of the Scottish Ministers to undertake the HRA. However, the Habitats Regulations require[4] the Applicant to provide such information as the competent authority may reasonably require to undertake the HRA.

2.2.4 Information for HRA Stages 1 and 2 has been provided by the Applicant in HRA Stage 1 LSE Screening Report (Part 1, Appendix 1A: Habitats Regulations Appraisal Stage 1 Likely Significant Effects Screening Report) and the Applicant's RIAA Part 1 - Introduction (TWP-BOW-RPS-ENV-REP-00013), Part 2 - Special Ares of Conservation (TWP-BOW-RPS-ENV-RPT-00014) and Part 3 - Special Protection Areas and Ramsar Sites (TWP-BOW-RPS-ENV-RPT-00015).

2.2.5 This Derogation Case presents the information required by Scottish Ministers to undertake HRA Stage 3.

2.3 Stage 3 – Legal Requirements for Derogation

2.3.1 In respect of HRA Stage 3, the Habitats Regulations provide[5] as follows:

'29(1) If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment;

(b) any other reasons which the competent authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest.'

2.3.2 Stage 3 therefore involves establishing that: (1) there are no alternative solutions to the Proposed Development; and (2) (if no alternative solutions are identified) there are IROPI for the Proposed Development to proceed. These two tests are the focus of this document.

2.3.3 This Derogation Case does not relate to any priority habitats or species. Therefore, per regulation 29(2) above, the IROPI case is not limited to "*reasons relating to human health, public safety or beneficial consequences of primary*

[4] See Regulation 28(2), The Conservation of Offshore Marine Habitats and Species Regulations 2017.
[5] Regulation 29(2), ibid.

importance to the environment" and may be based on wider reasons of socio-economic nature.

2.3.4 As an AEOSI is identified for a European Site outside Scotland (Flamborough and Filey Coast SPA), the Scottish Ministers must additionally notify the Secretary of State (SofS) and can only agree to the Proposed Development after having been notified of the SofS's agreement[6].

2.3.5 If the Stage 3 tests are met, the Scottish Ministers must ensure that "*any necessary compensatory measures are taken to ensure that the overall coherence of* [the National Site Network][7] *is protected*[8]. Compensation measures in relation to the Proposed Development are summarised in Section 5 of this Derogation Case.

2.4 Derogation Guidance, Policy & 'Precedent'

2.4.1 In drafting this Derogation Case, all relevant guidance, policy and planning 'precedent'[9] has been considered including the following key sources listed below.

Scottish Guidance and Policy

- Scottish Government (2026) – Update to the 2020 Offshore Wind Policy Statement: Scotland's Offshore Wind Ambition (OWEPS Update)
- Scottish Government (2025) – Scottish Marine Recovery Fund (MRF): interim guidance
- Scottish Government (2025) – Draft Updated SMP
- Marine Directorate (MD) (2024) – Marine Licensing and consenting: Habitats Regulations Appraisal
- Scottish Government (2023) – Scotland's Draft Energy Strategy and Just Transition Plan: Ministerial statement
- NatureScot (2022) – European Site Casework Guidance: How to consider plans and projects affecting Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)
- CMS (2021) – Habitats Regulations Appraisal (HRA) Derogations for Offshore Wind Projects in Scotland - Legal Framework for Decisions
- Scottish Government (2020) – SMP
- Scottish Government (2020b) – Offshore Wind Policy Statement (OWEPS)
- Scottish Government (2020c) – EU Exit: The Habitats Regulations in Scotland

[6] Regulation 31(5), ibid.
[7] By virtue of Regulation 2(3), ibid, references to "Natura 2000" are to be construed as references to the "national site network".
[8] See Regulation 36, ibid. Regulation 36 is to be amended as of 21 May 2026 to require that "*the appropriate authority must secure that appropriate compensatory measures are taken*".
[9] Planning decisions do not set legally binding precedent that must be followed in subsequent planning decisions, but can be material considerations, with the expectation being that decision-makers would generally approach similar matters in a consistent way.

- Scottish Government (2018) – Marine Scotland Consenting and Licensing Guidance: For Offshore Wind, Wave and Tidal Energy Applications
- David Tyldesly Associates (DTA) (2015) – Habitats regulations appraisal of plans: Guidance for plan-making bodies in Scotland
- Scottish Government (2015) – Scotland's National Marine Plan: A Single Framework for Managing Our Seas
- Scottish Natural Heritage (SNH) (2010) – SNH Guidance 'Natura sites and the Habitats Regulations. How to consider proposals affecting SACs and SPAs in Scotland. The essential quick guide'

2.4.2 The UK is the signatory to the Paris Agreement (2015) and other international conventions from which commitments in respect of climate change mitigation and energy matters arise. UK-wide energy security and energy policy are also reserved matters and therefore policy and guidance set at a UK level are relevant considerations for OWF projects in Scotland.

UK Policy

- Department for Energy Security and Net Zero (DESNZ) (2025) Overarching National Policy Statement (NPS) for energy (EN-1)[10].
- DESNZ (2025) NPS for renewable energy infrastructure (EN-3)[11].
- DESNZ (2022) – British Energy Security Strategy (BESS)
- DESNZ (2022) – Net Zero Strategy: Build Back Greener Details UK strategies and targets for achieving net zero emissions by 2050, emphasizing renewable energy development.

2.4.3 The NPS EN-1 and EN-3 highlight the urgent need to meet the UK Government's energy objectives by defining nationally significant low carbon infrastructure (which is capable of including offshore wind in Scotland) as a Critical National Priority (CNP).

2.4.4 Of relevance to this Derogation Case, NPS EN-1 provides (paragraph 4.2.34), that when decision-makers are considering derogations under the Habitat Regulations, the starting point for CNP infrastructure should be that the overarching need for energy security and decarbonising the power sector to combat climate change:

"*Requires a significant number of deliverable locations for CNP Infrastructure and for each location to maximise its capacity. This NPS imposes no limit on the number of CNP infrastructure projects that may be consented. Therefore, the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution. Further, the existence of another way of developing the proposed plan or project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution; and*

[10] DESNZ, December 2025.
[11] DESNZ, December 2025.

Are capable of amounting to imperative reasons of overriding public interest (IROPI) for HRAs, and, for MCZ assessments, the benefit to the public is capable of outweighing the risk of environmental damage, for CNP Infrastructure."

UK Guidance

- Defra (2021) – Habitats regulations assessments: protecting a European site
- Defra (2021) – Draft best practice guidance for developing compensatory measures in relation to Marine Protected Areas
- DTA (2021) – Habitats Regulations Assessment Handbook
- Department for Environment, Food and Rural Affairs (Defra) (2012) – Habitats and Wild Birds Directives: guidance on the application of article 6(4) Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures

European Guidance

- European Commission (EC) (2001) – Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites: Methodological Guidance on the provisions of Article 6(3) and 6(4) of the 'Habitats' Directive 92/43/EEC. November 2001
- EC (2018) – Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (2000) published by the EC in 2000 but updated in November 2018
- EC (2021) – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC and Annex

Previous UK OWF Plan and Project Derogations ('Precedent')

2.4.5 In preparing this Derogation Case the Applicant has had regard to the approach taken in previous decisions of the Scottish Ministers and the SofS on other OWF projects and OWF leasing rounds (plans) which required HRA derogations.

2.4.6 The Scottish Ministers have to date consented four offshore windfarms with a derogation case, being (i) Green Volt (April 2024), (ii) Berwick Bank (June 2025), (iii) West of Orkney (June 2025) and (iv) Salamander (July 2025).

2.4.7 In England, the SofS for the DESNZ has consented ten offshore wind farm projects based on HRA derogation cases. These are; (i) Hornsea Three (2020), (ii) East Anglia ONE North (2022), (iii) East Anglia TWO (2022), (iv) Norfolk Vanguard (2022), (v) Norfolk Boreas (2022), (vi) Hornsea Four (2023), (vii) the Dudgeon and Sheringham Shoal Extensions (2024), (viii) Rampion 2 (2025), (iv) Five Estuaries (2025) and (x) Outer Dowsing (2026).

2.4.8 Derogation Cases have also been required for several OWF leasing rounds as part of a plan-level HRA process: The Crown Estate (TCE) Round 4 Plan-level HRA (2022), TCE's "Capacity Increase Programme" Plan-level HRA (2025) and the Updated SMP Plan-level HRA (2025).

EC Opinions

2.4.9 The EC has adopted and published a number of opinions on HRA derogation cases between 1996 and 2025 (EC, 2025)[12]. These EC opinions have been reviewed and considered during the development of this Derogation Case.

[12] Nature and biodiversity - Library.

3 Consideration of Alternative Solutions

3.1 Introduction

3.1.1 This section provides evidence to demonstrate that the Scottish Ministers can be satisfied there are no feasible alternative solutions to the Proposed Development.

3.2 Approach

3.2.1 A consistent principle established in HRA guidance, case law[13] and previous OWF derogation decisions (see paragraphs 2.4.5 – 2.4.8 above) is that any alternative solutions must achieve the core or primary objectives of the project in question.

3.2.2 Defra *et al*. (2021) frames the approach as follows:

"An alternative solution is acceptable if it:

- *achieves the same overall objective as the original proposal;*
- *is financially, legally and technically feasible; and*
- *is less damaging to the European site and does not have an adverse effect on the integrity of this or any other European site."*

3.2.3 Drawing on the approach taken in previous derogation cases for OWF projects, the methodology used herein adopts the following steps:

- **Step 1** – identify the legal policy context and need for OWFs which provides the basis for the primary objectives of the Proposed Development.
- **Step 2** – identify the primary objectives of the Proposed Development to provide the context for considering whether there are alternative solution(s) that could achieve the same objective(s);
- **Step 3** – consider potential alternative solutions (including the 'do nothing' option) in terms of whether they (a) meet the objectives of the Proposed Development and (b) are financially, legally and technically feasible; and
- **Step 4** – consider whether any feasible alternative solutions identified in Step 3 would avoid or have appreciably less effect on the integrity of European Sites.

3.3 Step 1 - The Need

3.3.1 The legal and policy framework which form the basis of the need case for the Proposed Development is discussed in section 3 of the Applicant's Planning Statement. In summary, it is founded upon three urgent and essential 'needs':

(1) The need to reduce greenhouse gas emissions to mitigate climate change.
(2) The need for low carbon means of energy generation to decarbonise the energy system.

[13] *Spurrier, R (on the application of) v The Secretary of State for Transport* [2019] EWHC 1070 (Admin). The court expressed the view that "an alternative" must necessarily be directed at identified objectives or purposes; but it is beyond doubt that "an alternative solution" must be so aimed.

(3) The need for energy security to ensure supply, self-sufficiency and affordability.

3.3.2 The same needs, legal and policy context form the basis for the IROPI which justify the Proposed Development proceeding. Therefore, for convenience and to limit repetition, these are addressed further in Section 4 (IROPI) of this Derogation Case.

3.3.3 In summary, flowing from the above are a number of key Scottish and/or UK targets and objectives, all underpinned by legislation and policy as outlined in Table 2.

Table 2: Government Targets & Policy Objectives

ID	Government Target / Policy Objective	Source
A	Net Zero by 2045 (Scotland)	Climate Change (Scotland) Act 2008 (as amended 2019)
B	Net Zero by 2050 (UK)	Climate Change Act 2008 (as amended 2019 and 2024)
C	Over 95% of annual UK electricity demand to be met by UK-based low carbon generation.	Clean Power Action Plan (2025)
D	All electricity coming from low carbon sources by 2035 (UK)	Net Zero Strategy: Build Back Greener (DESNZ, 2021)
E	Up to 40 GW of additional offshore wind capacity in Scottish Offshore Waters by 2040	The OWEPS Update (2026)
F	Maximising Scotland's wind economy: making the most of its natural resources and established offshore wind sector; building on Scotland's first-mover advantage in floating offshore wind to generate clean electricity participating in global supply chains as well as expanding our domestic supply chain capacity, and seizing opportunities across the offshore wind supply chain.	Collaborative Framework and the Strategic Investment Model (SIM) UK Government (2025) Modern Industrial Strategy The Green Industrial Strategy, Scottish Government (2024). Scottish Government (2024) Offshore Wind Focus The Offshore Wind Industrial Growth Plan (RenewableUK, OWI, Crown Estate and CES, 2024)

3.3.4 As explored further in Section 4 (IROPI), neither Scotland nor the UK are on track to achieve these targets and policy objectives, based on current rates of progress and recent attrition in the offshore wind sector, with some projects handing back OLAs or being unsuccessful in CfD auctions.

3.3.5 As a result, there is a clear and urgent need for the Proposed Development as it would provide a substantial contribution (~1 GW), in the mid-2030s, towards achievement of the Scottish and UK Government targets and policy objectives identified in Table 2.

3.3.6 The Proposed Development is a critical component of a pipeline of OWF projects, all of which are required for Scotland and the UK meet their Net Zero, decarbonisation and OWF deployment targets.

3.4 Step 2 - Project Objectives

3.4.1 The legal and policy context summarised above provides the basis for the primary objectives of the Proposed Development are identified in Table 3 below.

Table 3: Project Objectives

ID	Objective	
PO.1	**To generate a significant volume of low carbon electricity from an offshore wind farm in support of the decarbonisation of the Scottish electricity supply.**	
	How Proposed Development meets Objective	*Legal & Policy Basis*[14]
	Delivery of ~1 GW of low carbon electricity, with a carbon payback period of 2 to 3 years and is projected to offset up to 337,422 tonnes of CO_2e over its 30-year lifecycle, supporting decarbonisation of the Scottish electricity supply.	Target/Policy Objectives: A – E
PO.2	**To export electricity to the electricity grid to support Scottish commitments for offshore wind generation and security of electricity supply.**	
	How Proposed Development meets Objective	*Legal & Policy Basis*
	The Proposed Development would provide ~1 GW of offshore wind capacity to export to the grid, powering up to 1.2 million homes annually, supporting security of electricity supply.	Target/Policy Objectives: C, D, E and F
PO.3	**To contribute to the delivery of a significant volume of additional operational offshore wind in Scottish waters[15] in the mid-2030s, before 2040.**	
	How Proposed Development meets Objective	*Legal & Policy Basis*
	The Proposed Development is a large scale, ~1 GW wind farm in Scottish waters contributing from late 2035 onwards.	Target/Policy Objectives: A – F
PO.4	**To optimise generation and export capacity within the constraints of available Scottish offshore wind sites and onshore transmission infrastructure.**	
	How Proposed Development meets Objective	*Legal & Policy Basis*
	The Proposed Development has been awarded an OLA by CES within POA E3 and proposed to development an OWF with up to 67 Wind Turbines (fixed bottom) and a capacity of over 1 GW. The Proposed Development has a 2035 grid connection date.	Target/Policy Objectives: A – F

[14] See Table 2.
[15] Scottish waters encompass the Scottish inshore region (0 -12nm) under the Marine (Scotland) Act 2010 and the Scottish offshore region (12-200nm).

ID	Objective	
PO.5	**To maximise economic opportunities the local North East region (including Aberdeen City, Aberdeenshire and Angus) through the delivery of skills/education/employment/manufacturing/supply chain investment and contribution to a "Just Transition" to help to create a positive legacy for Scotland.**	
	How Proposed Development meets Objective[16]	*Legal & Policy Basis*
	Estimated total CAPEX for the Project of £89 million, of which £57 million in Scotland, with estimated OPEX ('Commitments Scenario') of £637 million within the Regional Socio-Economics Study Area[17]. Across the full project lifecycle (construction, O&M and decommissioning), the Project could support ('Commitments Scenario'): • Employment of 23,478 aFTEs (2,087 FTEs), and £1,934 million GVA in Scotland; and • Employment of 34,224 aFTEs (5,083 FTEs) and £2.5 billion GVA across the UK. Furthermore, the Applicant has committed to locating an O&M port within the Regional Socio-Economics Study Area and it is expected that during this phase, the Project would support 6,279 aFTEs (209 FTEs) and generate £522 million GVA in the Regional Socio-Economics Study Area.	Target/Policy Objectives: E and F

3.5 Step 3 – consideration of potential alternative solutions

3.5.1 Step 3, addressed in the following sections, involves considering potential alternative solutions, in terms of whether they meet the objectives of the Proposed Development and whether they are legally, financially and technically feasible.

3.5.2 It is well established by previous derogation decisions on OWF applications by both the Scottish Ministers (e.g. Berwick Bank, West of Orkney) and the SofS (e.g. Rampion 2) that alternative forms of renewable technologies (e.g. onshore wind) are not alternative solutions to offshore wind and can be immediately discounted.

3.5.3 The identification of alternative solutions is therefore limited to consideration of:

- the 'do nothing' option,
- alternative OWF locations,
- alternative scale(s), design(s) or method (e.g. timing).

[16] EIA Report Volume 2, *Chapter 18: Socio-economic, Tourism and Recreation*. Employment and GVA impacts based on Supply Chain Development Statement Outlook (Thistle Wind Partners, 2023; updated 2026).
[17] Aberdeenshire, Aberdeen City and Angus.

The "Do Nothing" Option

3.5.4 The Defra (2021) compensatory measures guidance advises that the "do nothing" option should be considered, but acknowledges this will rarely be a true alternative:

"*It is unlikely in most cases that the 'do nothing' option (i.e., no proposed activity) would be an acceptable alternative as it would not deliver the same overall objective as 'the activity'. However, it is useful to provide a comparison for other alternatives and to act as a baseline against which public benefits can be assessed. Where it is most likely to be an option is where no or limited tangible public benefit can be demonstrated.*"[18]

3.5.5 Not proceeding with the Proposed Development would remove the risk of impacts to the qualifying features of the SPAs listed in Table 1 of this Derogation Case. However, it would not meet any of the identified project objectives for the following reasons:

- It would be inconsistent with the emissions reductions requirements of the Climate Change Act 2008 and Climate Change (Scotland) Act 2009 to mitigate the effects of climate change (contrary to objectives PO.1 and PO.2).
- It would result in the loss of ~1 GW of offshore wind capacity and thus a failure to substantially increase the volume of installed offshore wind in Scotland during the 2030s, with negative consequences for meeting Scotland's 40GW by 2040 offshore wind capacity target (contrary to objectives PO.1 – PO.5).
- It would mean that POA E3, a significant area of seabed identified as suitable for large-scale offshore wind development in Scottish waters, would fail to be developed (contrary to PO.4 and hindering PO.3 and PO.5)
- It would hinder meeting the ambitions set out in the Net Zero Strategy (2021), British Energy Security Strategy (2022) and OWEPS (2022 and 2025) (contrary to PO.1 – PO.4)
- Supply chain opportunities would be missed and not maximised (contrary to objective PO.5).

3.5.6 As such, the 'do nothing' approach is not an alternative solution and is discounted.

Alternative OWF Locations

Locations Outside Scottish waters

3.5.7 OWF projects located either outside Scottish waters, i.e., within UK waters, or in other countries, are not an alternative to the Proposed Development since they would not meet any of the objectives which are specific to Scottish waters (PO.1 – PO.5), nor would they in any way assist with achieving Scotland's offshore wind ambitions and Net Zero and related targets.

[18] Defra (22 July 2021) consultation draft guidance, at paragraph 21.

3.5.8 As such, TCE 2017 Extension Round sites and "Capacity Increase Programme", TCE Round 4 sites, Round 5 (Celtic Sea, Floating OWF) sites and any Round 6 sites are not alternative solutions to the Proposed Development.

OWF Within Scottish Waters - Outside Existing Leasing Round Areas

3.5.9 The development of OWFs in Scotland is constrained by the requirement to secure an OLA from CES through a formal competitive leasing process and the limited supply of seabed made available through such leasing rounds.

3.5.10 CES own or exercise exclusive rights to manage the leasing of and exploitation of the seabed for OWF development within Scottish Offshore Waters. CES make areas of seabed available for commercial-scale[19] OWF development selectively in leasing rounds. Such leasing rounds typically take several years to complete, and leasing rounds are usually separated by several years.

3.5.11 The two most recent leasing rounds, ScotWind and the Innovation and Targeted Oil and Gas Decarbonisation (INTOG) rounds, have only recently been completed. It is not known if or when there may be a further CES leasing round. The OWEPS Update (2026) confirms (section 2) that "*no further offshore wind leasing rounds are planned in the near term*". Furthermore, the "up to 40 GW" target in the OWEPS Update (2026) is only just above the estimated ~38 GW pipeline considering ScotWind and INTOG combined. This implies no current plans for any sizeable commercial-scale OWF leasing round in Scottish waters pre-2040.

3.5.12 Furthermore, any OWF location which has not yet commenced a site selection exercise would be unlikely to meet objective PO.3, due to the long lead in times for site selection, EIA, consenting, detailed design, procurement, and construction, coupled with CfD constraints and grid connection date delays. On this basis, an alternative Scottish OWF site in some future leasing round could not contribute to Scottish offshore wind capacity in the mid-2030s.

3.5.13 Therefore, it is concluded that sites not already identified via a CES leasing round are not alternative options, in line with objective PO.4 which recognises the constraint of available Scottish OWF sites.

3.5.14 Additionally, areas which have not been made available by CES, far less secured by an Applicant, cannot be considered as legally feasible alternative solutions and can also be discounted for this reason.

OWF Within Scottish Waters – Within Existing Leasing Round Areas

3.5.15 Alternative OWF locations within Scottish Offshore Waters subject to previous or current leasing rounds comprise:

- pre-ScotWind leasing rounds: TCE Rounds 1 and 3, and the Scottish Territorial Waters 2009 leasing round;
- ScotWind; and

[19] Test and demonstration OWF projects may sometimes be awarded OLA outside of a competitive leasing round.

- INTOG sites.

3.5.16 However, the Scottish Government's OWEPS Update (2026) has set the policy objective of 40 GW of new OWF capacity by 2040, "*in addition to the already operational or consented capacity (as of August 2025 when the consultation ended)*". It should be noted that Berwick Bank (4.1 GW) was consented in July 2025 and therefore does not count towards the 40 GW target.

3.5.17 It is also relevant to note the terms of NPS EN-1 at paragraph 4.2.34. It advises that the starting point for CNP infrastructure (which includes offshore wind) is that the overarching need for energy security and decarbonising the power sector to combat climate change [emphasis added]:

"*requires a **significant number of deliverable locations** for CNP Infrastructure and **for each location to maximise its capacity.** This NPS imposes no limit on the number of CNP infrastructure projects that may be consented. Therefore, **the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution.** Further, the existence of another way of developing the proposed plan or project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution; and…*"

3.5.18 Considering the policy context above, it is considered that, individually and cumulatively, previous and current leasing round OWF locations do not meet the project objectives and/or would not be legally feasible alternative solutions for one or a combination of the following reasons:

(a) The policy ambitions expressed in the OWEPS Update (2026) and Draft Updated SMP (2025) require a significant number of deliverable locations for OWF and for each location to maximise its capacity. The fact there are other project locations in response to the same need is not an alternative solution (applying the policy and logic set out in NPS EN-1).

(b) To meet the new target of 40 GW of additional OWF projects, almost all ScotWind and INTOG projects are needed, and all need to achieve consent and build out at, if not above, their currently anticipated installed capacities. These projects cannot therefore reasonably be regarded as alternatives to one another.

(c) Consenting all these OWF projects is important because historic project attrition rates suggest a proportion of the pipeline of OWF projects may not reach operational status. Scottish Renewables recommended a 30% MW attrition rate in their "An industry view of the Draft Sectoral Marine Plan for Offshore Wind" (2018). This reflected the challenging conditions in Scottish Offshore Waters relative to the rest of the UK (e.g. water depths, ground conditions and grid charges).

(d) The 12 INTOG projects will either supply low carbon electricity to oil and gas infrastructure ('TOG project') or are very small-scale innovation

projects (100 MW or less) ('IN project'). Given their purpose (TOG)[20] and small scale (TOG and IN projects)[21], individual sites for INTOG projects would fail one or both of objectives PO.1 or PO.2.

(e) Operational and consented (as at August 2025[22]) OWF projects in Scotland do not count towards the proposed target of 40 GW of new OWF capacity in the Updated OWEPS (2026). Existing or consented sites cannot provide new capacity (unless and until repowered) and do not meet objective PO.3 and cannot be alternative solutions to the Proposed Development.

(f) The future repowering of operational OWF can also be discounted as an alternative solution as it would fail to meet objective PO.3. As noted in the Berwick Bank decision[23], early operational OWF generally have a life span of 20 to 25 years and current operational wind farms will not reach their decommissioning stage for another decade, under exception of Robin Rigg (~216 MW) for which the Section 36 Consent expires in 2032 (unless extended). The Robin Rigg project may not repower, and if it does it would need a fresh Section 36 Consent and Marine Licences and, on typical consenting and development timescales, would not be operational in the early 2030s in order to meet PO.3.

(g) Finally, other OWF locations are the subject of existing leases or OLA or leases and are not legally available to the Applicant (i.e. not a feasible alternative). A failure to develop the Proposed Development would fail to optimise generation capacity within seabed made available for OWF development, contrary to objective PO.4.

3.5.19 It is acknowledged that, since the completion of the ScotWind leasing round, two OLAs have been relinquished. This evidence of project attrition reinforces the need for consent to be granted to viable and deliverable projects in order to achieve offshore wind deployment targets. Attrition risk has been explicitly recognised in Scottish offshore wind policy, placing increased importance on the progression of remaining OLAs to ensure delivery of sufficient project capacity.

3.5.20 Projects within leasing rounds cannot reasonably be regarded as alternatives to one another. The Proposed Development therefore remains necessary as part of the wider portfolio of projects required to deliver policy ambitions, and its role cannot be substituted by other projects within the leasing pipeline. In addition, it is not yet known whether CES will seek to re-offer the relinquished sites and, as such, they cannot be considered viable alternatives. In any event,

[20] While some TOG projects will export excess capacity to the onshore grid, this is anticipated to be only a proportion of the generating capacity. For example, the Green Volt TOG project has consent for 35 wind turbines, with a generating capacity of 560 MW, with a contract for TEC with NESO for only 300MW.
[21] For example, the Culzean TOG project (one floating wind turbine) will not export electricity to the grid onshore and cannot therefore meet PO.1 or PO.2.
[22] The 40GW additional offshore wind target is set by reference to the baseline of operational or consented capacity as of August 2025 when the consultation ended.
[23] Scottish Ministers' Consideration of the Case for a Derogation, June 2025, at paragraph 4.3.2.16.

even if re-offered, the timescales involved would be insufficient for these sites to contribute to Scotland's offshore wind capacity in the mid-2030s.

3.5.21 In conclusion, the Scottish Government policy objective is to deploy 40GW of new offshore wind (i.e. excluding operational and consented OWF as of August 2025). Having considered alternative OWF locations within existing leasing round areas, none represents a feasible alternative solution to the Proposed Development.

Alternative Scale, Design, Timing or Method

Scale

3.5.22 The size of the Array Area is the product of a difficult balance between seeking to deliver the optimum capacity within E3 POA (in line with objectives PO.1, PO.3 and especially PO.4), ensuring the technical and commercial viability of the Proposed Development [24], while avoiding or reducing likely significant environmental effects so far practicable.

3.5.23 E3 POA extends over an area of 474 km^2. As set out in the Offshore EIA Report Volume 1, Chapter 6: Site Selection and Consideration of Alternatives, a detailed assessment undertaken by the Applicant concluded that the eastern part of the E3 POA was the least constrained environmentally, with higher consenting and technical risks in the western portion of the POA.

3.5.24 Informed by ornithological heat mapping, consideration of seabird foraging ranges and connectivity with SPAs, the Applicant decided to limit the Array Area to the eastern extent of the POA. This led to the identification of the Array Area of 187 km^2, representing a 42% reduction in scale from the E3 POA. Figure 1 below shows the restricted Array Area of 187 km^2 relative to the E3 POA area.

3.5.25 To reduce the Array Area further would be contrary to objective PO.4. Any further reduction in Array Area would result in a significantly reduced size of wind farm, or an increased wind turbine generator density resulting in turbines being more tightly packed together and less efficient (e.g. wake effects). This leads to a reduced energy yield from the wind farm. Any further reduction to the Array Area would have an impact on the commercial viability of the Proposed Development.

[24] E.g. considering turbine minimum spacing/density, wake effects, ground conditions and other factors.

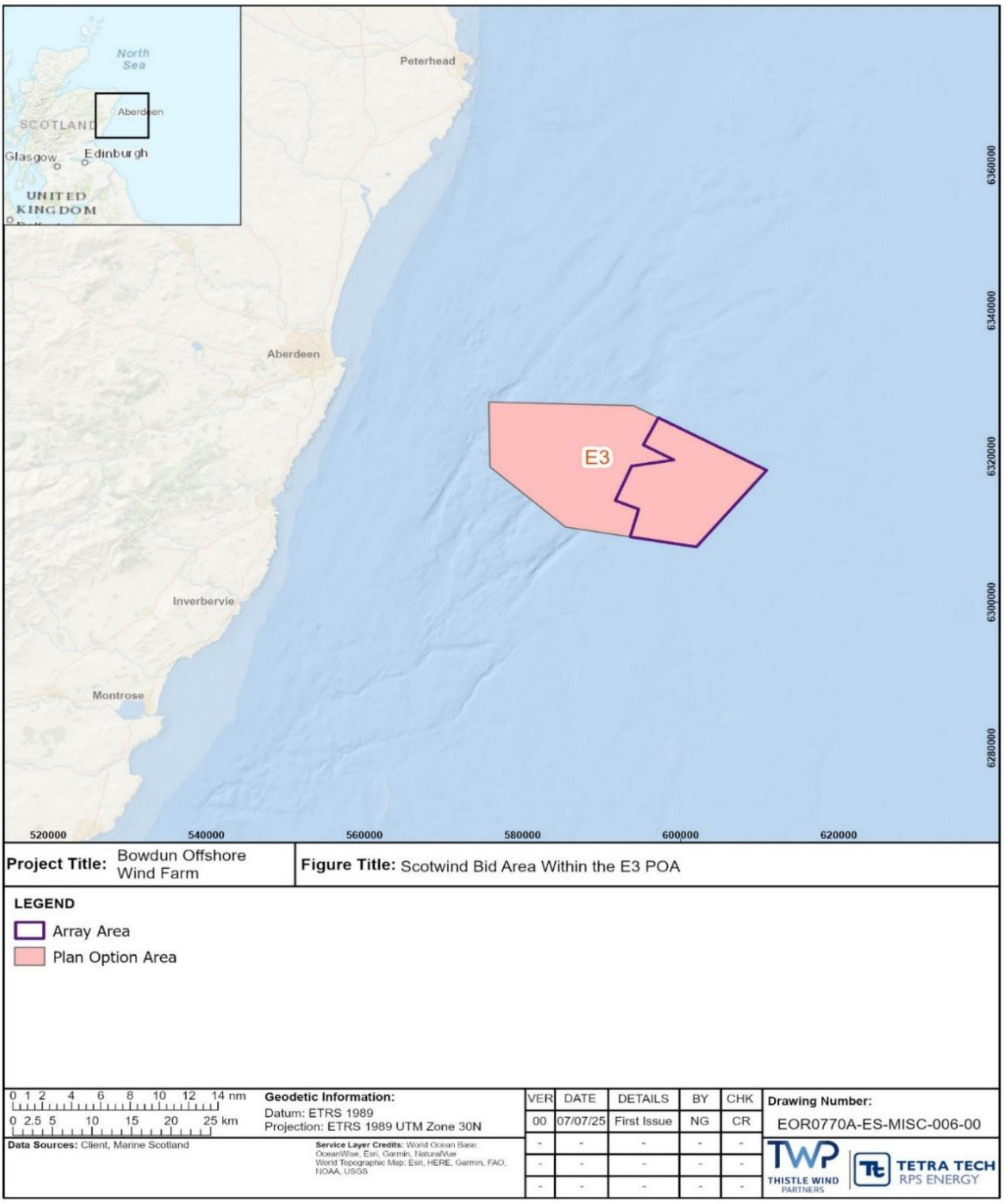

Figure 1: Array Area relative to E3 POA

3.5.26 There also remains the potential for as yet unknown constraints within the Array Area. The final layout within the Array Area will be informed by geotechnical surveys, UXO surveys and post-consent discussions with the relevant authorities, including the Maritime and Coastguard Agency and Northern Lighthouse Board, for approval of the final layout. A further reduction of the Array Area would unacceptably limit essential layout flexibility to avoid challenging ground conditions. As such a further reduction in the Array Area at this stage is not considered to be feasible on financial and technical grounds.

Alternative Design

3.5.27 Potential alternative design options include:

- Smaller rotors/swept area to reduce collision risk; and
- Increased Air Gap to reduce collision risk.

Smaller Rotors/Swept Area

3.5.28 The amount of power a turbine can produce reduces significantly, and disproportionately, as the size of the rotor is reduced. For example, a reduction in rotor diameter of approximately 30% results in a reduction in the power that can be captured by the Wind Turbine of approximately 50%. Therefore, reducing the size of the rotors and their associated swept area by even a small amount, would materially reduce the wind capture and power output of the turbine, and result in a substantially lower capacity project. This would be contrary to objective PO.4.

3.5.29 To achieve the same optimum capacity of ~1 GW using smaller rotors would require a greater number of turbines, increasing the density of turbines and potentially the magnitude of potential disturbance and collision effects e.g. on ornithology receptors. A highly densely packed turbine layout could also have implications for other receptors (e.g. vessels).

3.5.30 A smaller rotor PDE than that identified is not considered to be an alternative solution as it would not meet the objective PO.4 and is not considered to be financially feasible.

Increased Air Gap

3.5.31 Following EIA scoping, the Applicant increased the Air Gap from 25.36 m above LAT to the current 33.12 m above LAT (based on the outputs of preliminary collision risk modelling and associated predictive assessment), in order to reduce and mitigate the risk of collision impacts on seabirds. The blade tip clearance has been set at 33.12 m above LAT to reflect the level of reduction in predicted collision mortality indicated by the modelling, whilst balancing this against the need for flexibility to account for uncertainty around larger turbine models and supply chain availability of the largest vessels capable of deployment of Wind Turbines with larger towers.

3.5.32 Given the number of OWFs that are expected to be constructing in the early to mid-2030s, there will be high competition for installation vessels and an increase in turbine height, by even a few metres, may rule out or limit the

number of capable vessels, adversely affecting the Project programme and increasing costs.

3.5.33 The combination of the increased Wind Turbine hub height which would be required by a further increase in the Air Gap, plus vessel availability, crane suitability, specific local seabed/soil conditions, and the current limits of available evidence within the predictive collision risk modelling, result in a complex set of requirements which cannot yet be met by the existing supply chain with sufficient confidence to support further changes at this stage.

3.5.34 Therefore, any further increase in the Air Gap, beyond what has been committed to at this stage, would be an unacceptable risk in the context of objective PO.3 and is also not considered to be a feasible alternative solution on technical grounds based on the current predictive evidence base and understanding of deliverability.

Alternative Timing

3.5.35 For a seasonal restriction on turbine operation to have any meaningful effect on the number of predicted bird collisions, turbine shutdowns would need to occur for several months of the year. Conversely, significantly reducing the period when the Proposed Development is available and able to generate electricity would substantially reduce the Project's ability to deliver low carbon electricity to the National Grid and contribute to a secure energy supply. Any such seasonal/timing restriction would also be unprecedented for an OWF and would adversely affect the attractiveness of the Project from an investment and financing perspective, jeopardising is viability.

3.5.36 Furthermore, since the identified AEOSI only arises in-combination with other OWF projects, and the contribution of the Proposed Development to the in-combination collision risk total is modest, the degree of reduction to the in-combination total that would be achieved through turbine shutdown would be immaterial to the overall in-combination effect and disproportionate to the adverse economic impact on the Proposed Development.

3.5.37 This option would accordingly not meet objective PO.4 and would jeopardise objective PO.3. It is also discounted on grounds of feasibility (legal[25], technical and economic).

Alternative Method

3.5.38 As the adverse effects of relevance to this Derogation Case relate to the O&M phase of the Proposed Development, no alternative methods are available beyond the scale, design and timing options considered in the preceding sections.

3.5.39 There are no alternative solutions relating to an alternative method of carrying out the Proposed Development, and this is not considered further.

[25] A condition which imposed a disproportionate seasonal restriction would likely not meet the tests of necessity and reasonableness to form the basis of a valid condition.

3.6 Step 4 – Assessment of Effects of Feasible Alternative Solutions

3.6.1 Step 4 is not applicable, as no feasible alternative solutions have been identified.

3.7 Conclusion on Alternative Solutions

3.7.1 The information presented in this Section 3 demonstrates the robust assessment of alternative solutions that has been undertaken by the Applicant.

3.7.2 The assessment has followed available guidance and included a 'do nothing scenario', alternative locations, scale, design, methodology and timing.

3.7.3 No feasible alternative solutions to the Proposed Development have been identified consistent with the project objectives.

4 IROPI

4.1 Introduction

4.1.1 This section provides the evidence which demonstrates that the Scottish Ministers can be satisfied there are IROPI that justify authorising the Proposed Development.

4.2 Approach

4.2.1 The parameters of IROPI are explored in guidance provided by Defra and the EC, which identify the following guiding principles (re-ordered below for convenience):

- **Public interest:** The interest must be a public rather than a solely private interest (although a private interest can coincide with delivery of a public objective);
- **Long-term:** The public interest would generally be long-term (short-term interests are unlikely to be overriding because the conservation objectives of protected sites are long term interests).
- **Imperative**: Urgency and importance: There would usually be urgency to the objective(s) and it must be considered "indispensable" or "essential" (i.e., imperative). In practical terms, this can be evidenced where the objective falls within a framework for one or more of the following:

  i) Actions or policies aiming to protect fundamental values for citizens' life (health, safety, environment);

  ii) Fundamental policies for the State and the Society; or

  iii) Activities of an economic or social nature, fulfilling specific obligations of public service.

- **Overriding:** The public interest of development must be greater than the public interest of conservation of the relevant European Site(s).

4.2.2 To meet the IROPI test, the Scottish Ministers need to be satisfied that the Proposed Development serves a long-term, imperative public interest. If so, the Scottish Ministers must weigh that public interest against the conservation interests which would be affected by the Proposed Development and decide whether the public interest overrides the AEOSI on the SPAs.

4.2.3 The following sections of the Applicant's Derogation Case are structured around these principles and stages to demonstrate that the Proposed Development should proceed on IROPI grounds.

4.2.4 As noted earlier, this Derogation Case does not relate to any priority habitats or species under the Habitats Regulations. Accordingly, the IROPI case is not limited to "*reasons relating to human health, public safety or beneficial consequences of primary importance to the environment*"[26] and may be based on wider reasons of socio-economic nature.

[26] Habitats Regulations, Regulation 29.

4.3 The Public Interest: Imperative and Long-term

4.3.1 The long-term, imperative public interests which justify proceeding with the Proposed Development are grounded in the need for urgent progress to achieve several high-priority Scottish and UK national policies which seek to address the following urgent and important needs:

(1) The need to reduce greenhouse gas emissions to mitigate climate change.

(2) The need for security of electricity supply and reduced electricity cost serving public health and safety.

(3) As a consequence of (1) and (2), the need to substantially increase low carbon sources of electricity generation, such as from offshore wind.

Need to Reduce Greenhouse Gas Emissions

4.3.2 Commitments made by the UK and international governments at COP21 (the Paris Agreement 2015) were to limit global temperature increase to "well below 2°C" (and preferably 1.5°C) above pre-industrial levels.

4.3.3 At a global level there is mounting evidence that the world is not on track to meet the commitments within the Paris Agreement.

4.3.4 The IPCC Working Group III (IPCC WG3) published its Summary of Climate Change as part of the IPCC's Sixth Assessment Report in April 2022 (IPCC, 2022). The IPCC WG3 report notes that average global annual greenhouse gas (GHG) emissions during the last decade were higher than in any previous decade on record.

4.3.5 The IPCC WG3's report modelled four scenarios. These indicate that policies implemented to date, while likely to slow the historical increase in annual emissions, are insufficient to reduce them. In short, current policies will leave global GHG emissions continuing at their current level to 2050, rather than reducing them.

4.3.6 At a national level, the Climate Change (Scotland) Act 2009 binds the Scottish Government to reach Net Zero by 2045, while the Climate Change Act 2008 binds the UK to achieve Net Zero by 2050. Again, neither the UK nor the Scottish Government are on track.

4.3.7 Both the UK and Scottish Governments withdrew their 2030 climate change targets on the advice of the CCC for feasibility concerns, and the CCC made it clear in its 2025 Progress Report[27] that the UK is not on track to meet its fifth (2028-2032) or sixth (2033-2037) Carbon Budget commitments:

"*Credible plans are in place to overachieve the Fourth Carbon Budget (CB4), as required to be on a sensible path to Net Zero. Plans that are either credible or have some risks attached cover three-fifths of the emissions reductions required to meet the UK's 2030 NDC and the Sixth Carbon Budget (CB6). But there remain significant areas in which plans are currently insufficient*".

[27] CCC's Progress Report to Parliament, 2025, at page 18.

4.3.8 The CCC's 2025 Scotland Progress Report[28] notes that emission reductions in Scotland between 1990 and 2023 have been mainly driven by the energy supply sector. Scotland is now more than halfway to Net Zero emissions by 2045. However, it goes on to note that:

"*The pace of emissions reduction will need to slightly increase to meet Scotland's carbon budgets.*

- *The average annual emissions reduction between the introduction of the Act in 2009 and 2023 was 1.6 $MtCO_2e$ per year. This will need to increase to an average annual reduction of 1.8 $MtCO_2e$ per year between 2023 and 2045 to meet Scotland's emissions targets*."[29]

4.3.9 The assessment in Volume 2, Chapter 22: Climate Change of the EIA Report estimates that the Proposed Development will produce approximately 83,481,611 MWh of low carbon electricity during its 30 year O&M phase. Over its lifecycle the Proposed Development will produce an emission intensity of 7.3 gCO2e/kWh. The electricity generated by the Proposed Development will save over 377,422 tCO2e from being emitted into the atmosphere that would otherwise have been emitted from conventional, higher carbon emitting forms of energy generation (i.e. fossil fuels).

4.3.10 It will take approximately 2 – 3 years[30] to 'pay back' the GHG emissions relating to the construction phase from the start of operation. This 'payback' period is in line with both the UK and Scottish Governments' Net Zero ambitions. Due to the carbon savings that the O&M phase will produce from low carbon electricity generation, the Proposed Development would have a beneficial effect on the climate.

4.3.11 Addressing climate change constitutes "*reasons relating to human health, public safety or beneficial consequences of primary importance to the environment*" expressly identified by the Habitats Regulations as capable of forming IROPI.

Need for Energy Security and Self-Sufficiency

4.3.12 Energy security is about ensuring secure, reliable, uninterrupted supplies to consumers, and having a system that can effectively and efficiently respond and adapt to changes. Reliance on global markets for imported energy leaves the UK vulnerable to spikes in world energy market prices (e.g. caused by war or pandemics), political pressure, and potentially physical supply disruptions and the knock-on effects of supply challenges in other countries.

4.3.13 The Court of Justice of the European Union (CJEU) confirmed in 2019[31] that ensuring the security of the electricity supply and self-sufficiency constitutes IROPI. The CJEU held that security of energy supply in the EU is one of the fundamental objectives of EU policy in the field of energy. The CJEU concluded

[28] CCC's Progress in reducing emissions in Scotland - Report to Parliament 2025, published February 2026.
[29] Ibid at section 2.1.1.
[30] Depending upon whether DESNZ 'non-renewable fuels' or National Grid average reference used.
[31] Judgement of 29.7.2019 – Case C-411/17 Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen.

[emphasis added] "*the objective of ensuring the security of electricity supply in a Member State* ***<u>at all times</u>*** *constitutes an imperative reason of overriding public interest, within the meaning of that provision*"[31].

4.3.14 This has been recently affirmed by the EC. In an EC's Opinion of 28 March 2025[32] on an HRA derogation, the EC confirmed that the replacement of the Traunfall hydroelectric power plant in Austria was justified by IROPI on the basis it would further the expansion of Austrian renewable energy production, increase baseload generation and contribute to grid stability, thereby providing an essential contribution to security of supply and energy self-sufficiency in line with the Austrian grid strategy.

4.3.15 As noted by the UK Government in the BESS (2022), the imperative to ensure security of energy supply was laid bare by Russia's invasion of Ukraine. This had a direct impact on the affordability of energy in the UK. The same impact has been demonstrated again more recently because of the blockage of the Strait of Hormuz.

4.3.16 The urgency for an electricity system which is self-reliant and not dependent on fossil fuels is enormous, to protect consumers from high and volatile energy prices, and reduce opportunities for geopolitical intrusion into national electricity supplies and economics. The energy security and affordability benefits associated with developing electricity supplies which are not dependent on volatile international markets and are located within the UK's national boundaries are more important than ever.

4.3.17 The UK's Clean Power target is for over 95% of annual UK electricity demand to be met by UK-based low carbon generation. Accelerating the switch to domestic renewable energy sources and achieving the Clean Power target will enhance energy security. The Clean Power 2030 Action Plan (2025) reiterates the energy security and affordability benefits of pursuing a low carbon future:

"*In an era of heightened geopolitical risk, switching fossil fuelled generation for homegrown clean energy from renewables and other clean technologies offers us security that fossil fuels simply cannot provide …*".

4.3.18 It is critical that large scale renewable energy projects such as the Proposed Development are developed and consented with urgency. Energy security is, alongside decarbonisation, a critical driver and reason for the energy and offshore wind targets identified in Table 2 and the policy documents highlighted in Table 4 below.

Need to Increase Low Carbon Sources of Electricity Generation

4.3.19 Given the need to reduce GHG emissions and increase energy security, OWFs represent an opportunity to increase electricity generation from a low carbon, low cost, renewable source. Furthermore, decarbonisation (e.g. homes,

[32] C(2025) 1843 final. Opinion issued at the request of Austria pursuant to the second subparagraph of Article 6(4) of Council Directive 92/43/EEC of 21 May 1992: replacement of the Traunfall run-of-the-river hydroelectric power plant (Municipality of Desselbrunn / Municipality of Roitham am Traunfall, Upper Austria).

buildings and transport) will drive a significant surge in electricity demand in the decades to come.

4.3.20 NPS EN-1 (2023) states that electricity demand may be more than double by 2050 as the transport, heating and industry sectors make the change from fossil fuels to low carbon electricity to support their decarbonisation.

"*Securing affordable, homegrown and abundant renewable resources means we will be able to run our power system for increasing periods on clean, low carbon generation, with renewables providing the vast majority of generation, and nuclear continuing to deliver a backbone of vital low carbon power. A clean power system will enable further electrification of demand sectors and therefore increased emissions reduction.*

Reducing emissions in large parts of transport, heating and industry could lead to more than half of total energy demand being met by clean electricity in 2050, up from 17 per cent in 2019, representing a doubling in demand for electricity

This switch will break down the siloes which have traditionally existed between separate heat, transport, and electricity networks. We will need to adapt existing networks or build new ones to integrate low carbon hydrogen into the system and enable the transport and storage of carbon dioxide." (paragraph 2.3.6 – 2.3.8, NPS EN-1).

4.3.21 This is supported by page 45 in the *Powering Up Britain – Energy Security Plan* (DESNZ, 2023f) which states:

"*As we transition to a more resilient and clean energy system, we anticipate that demand for electricity could double by 2050. Between now and then, the system will need to enable 50 gigawatts of offshore wind by 2030; and the decarbonisation of the power system, subject to security of supply, by 2035*."

4.3.22 According to the CCC's 'Balanced Pathway' approach to achieving Net Zero by 2050, deployment of low-cost renewables would need to account for 75% - 90% of electricity demand in 2050. Therefore, there is a need to increase low carbon sources of electricity generation.

4.3.23 However, the CCC's 2025 Progress Report[33] confirms that current OWF annual deployment rates are not going to be sufficient and would need to substantially increase [emphasis added]:

"*To achieve the Government's ambition in the Clean Power 2030 Action Plan, total operational capacity of renewables will need to more than double by 2030 … **This will require a tripling in annual installations** of both offshore and onshore wind and a four-fold increase in solar compared to the average rate seen since the start of this decade*".

4.3.24 As of January 2026, there are ten operational OWF in Scottish waters with a combined capacity of 4.3GW[34]. A further one (Inch Cape, ~1.1 GW) is under construction. Eight OWF (~7.3 GW) have consent but only two projects, Berwick Bank and Pentland Floating Offshore Wind, secured a CfD in Allocation

[33] CCC's Progress Report to Parliament, 2025, at page 15.
[34] OWEPS Update (2026).

Round 7 (AR7) and Berwick Bank's CfD is for only part of its capacity (~1.3GW). CfD allocation rounds are highly competitive and some projects are not awarded CfDs on their first or even second attempt.

4.3.25 With an indicative ~1 GW capacity which could be delivering renewable energy from 2035, the Proposed Development will contribute to meeting the Scottish and UK Government objectives from 2035, helping deliver the Scottish Government's 40GW by 2040 target.

Public Policy Underpinning

4.3.26 The DEFRA (2012) guidance notes that "*projects which enact or are consistent with national strategic plans or policies, may be more likely to show IROPI*". As outlined in Table 4 below, the Scottish Government's programme for offshore wind is identified and supported across a range of policy documents which establish its critical role in the delivery of Scottish and UK Net Zero targets and energy security. As energy policy and regulation remains a reserved matter, UK-wide energy security and energy policy is also an important consideration and is also addressed below.

Table 4: Fundamental Public Policy Underpinning

Policy	Summary
The Offshore Wind Policy Statement Update (2026), Scottish Government	The OWEPS Update (2026) sets out the Scottish Government commitment to maximise the deployment of offshore wind in Scotland, by resetting aiming for the development of 40 GW of additional capacity by 2040.
Scottish Government's draft Energy Strategy and Just Transition Plan (ESJTP) (2023)	The draft ESJTP sets out a vision of affordable, resilient and clean energy supplies for Scotland and how it will be delivered, maximising home-grown clean energy provision and significantly increasing domestic production of renewable electricity, addressing climate change by reducing the emissions of our energy sector.
British Energy Security Strategy (DESNZ, 2022)	The BESS (2022) set out the UK ambition to deliver 50 GW of offshore wind energy by 2030, including 5 GW of floating wind. This is an increase of 4 GW of floating wind compared to the Net Zero Strategy: Build Back Greener policy set out in 2021 (2021). The strategy was a response to concerns over security, affordability and sustainability of the UK's energy supply. In particular, it recognises the importance of ensuring energy security for the UK, which can be achieved through an electricity supply coming from domestic renewable energy sources, as opposed to volatile international fossil fuel markets.
Powering Up Britain Policy papers including an Energy Security Plan and Net Zero Growth Plan in 2023 (DESNZ, 2023).	These policies aim to encourage the use of renewable energies, including from OWFs, as part of a solution to the climate emergency and details how the UK Government will improve energy security, take advantage of the economic opportunities of the transition to low-carbon energy generation and deliver on the commitment to achieving net zero by 2050. Offshore wind is a key element of these publications, which includes the commitment to developing 5 GW of floating wind

Policy	Summary
	by 2030, and to helping expand and increase the benefits of floating projects by committing to a floating Offshore Wind Manufacturing Investment Scheme, which will provide up to £160 million to increase investment in port infrastructure projects.
Overarching NPS for Energy (EN-1) and NPS for Renewable Energy Infrastructure (EN-3)	EN-1 (2025) sets out UK Government policy on delivering major energy infrastructure and is a relevant consideration for Scottish Ministers when exercising their functions on licensing and consenting of OWF projects as energy policy is a matter reserved to UK Ministers. EN-3 (2025) reflects this and explains that policy within EN-3 may be a relevant consideration in planning decisions in Scotland (paragraph 1.4.5). EN-1 notes that the provision of nationally significant low carbon infrastructure, which includes offshore wind, is a CNP for the UK Government. EN-1 states that, in recognition of the level and urgency of need for CNP infrastructure, the Secretary of State will start with a presumption in favour of granting consent to these projects (paragraph 4.1.3). EN-1 also sets out that energy security and decarbonising the power sector to combat climate change are "*...capable of amounting to IROPI for HRAs...for CNP Infrastructure*" (paragraph 4.2.34).
Green Industrial Strategy (Scottish Government, 2024)	This mission of the Green Industrial Strategy is to ensure that Scotland realises the maximum possible economic benefit from the opportunities created by the global transition to net zero. To that end, the Scottish Government has identified five key areas in which Scotland is well placed to develop internationally competitive economic clusters. Number one on that list is: **"*Maximising Scotland's wind economy:*** *making the most of our natural resources and established onshore and offshore wind sectors; building on our first-mover advantage in floating offshore wind to generate clean electricity; participating in global supply chains as well as expanding our domestic supply chain capacity, and seizing opportunities across the offshore wind supply chain, from infrastructure to manufacturing opportunities; positioning Scotland as a leader in material circularity of wind turbines and components"*

4.4 The Overriding Nature of the Public Interest

4.4.1 The RIAA for the Proposed Development has identified AEOSI in respect of the qualifying features of the SPAs identified in Table 1 in-combination with other OWF projects.

4.4.2 In demonstrating IROPI, the public interest of the Proposed Development must be weighed against the qualifying interests of these SPAs, which are protected by the Habitat Regulations.

4.4.3 An assessment of the overriding interests of the Proposed Development necessarily involves a balancing exercise. It is for the decision-maker to determine whether the imperative, long-term public interests that the Proposed Development serves, outweigh the conservation interests of the qualifying species of the affected SPAs.

4.4.4 That judgment must be exercised in a rational and a reasonable manner in the context of the HRA framework as described in earlier sections of this Derogation Case. However, ultimately it is a matter of discretion as to the balance to be struck.

4.4.5 The overriding nature of the public interest and benefits which the Proposed Development will deliver, through decarbonisation of the energy sector and security of affordable energy supplies, which is a 'core' IROPI of 'human health, public safety and beneficial consequences of primary importance for the environment.'

4.4.6 Given that the Proposed Development does not impact upon priority features, the Applicant has over-delivered in demonstrating that the Proposed Development meets this 'core' IROPI that would override impacts even on priority habitat/species, as opposed to the lower standard of demonstrating IROPI of a social or economic nature where non-priority features are concerned.

4.4.7 Viewed in the context of the Scottish and UK legislative commitments and policy frameworks outlined above, the Proposed Development will make an important contribution to the national public interest, reflecting the clear and urgent need for reducing carbon emissions as swiftly as possible, the requirement to develop renewable energy infrastructure to deliver on the identified project objectives and the current lack of alternatives.

4.4.8 The scale of the Proposed Development (~1 GW) and its importance is reflected in both Scottish and UK planning policy. It qualifies as a 'national development' for which there is an established need as set out in National Planning Framework 4 (NPF4). It also qualifies as 'CNP infrastructure' (NPS EN-1). Such is the importance of OWFs that in NPS EN-1 the SofS states that he will start "*from the position that energy security and decarbonising the power sector to combat climate change…are capable of amounting to imperative reasons of overriding public interest (IROPI) for HRAs*" (Paragraph 4.2.34).

4.4.9 The importance of a reliable, secure and stable energy supply in the UK, with reduced dependencies on imported oil and gas, which can be subject to geopolitical tensions and volatile international markets, as emphasised by the BESS (2022), is also critical. The Proposed Development will also serve the

national public interest through its contribution to energy security as a domestic renewable energy source of electricity.

4.5 IROPI Conclusion

4.5.1 These are clear and imperative reasons justifying the Proposed Development.

4.5.2 The environmental and social benefits to the UK from increasing the generation of low carbon energy are clear. The Proposed Development can provide a critical contribution of ~1 GW from 2035, helping achieve the 2040, 40GW target. The Proposed Development will also significantly contribute to the UK's legally binding Net Zero targets, help to decarbonise the UK's energy supply, and contribute to security of supply while providing socio-economic benefits, in line with the Scottish Government and UK Government's national policies.

4.5.3 The public interest inherent in tackling the climate crisis is also served by the fact that mitigation of the climate crisis will, to an extent, alleviate the nature crisis, given that many of the pressures exerted by the nature crisis emanate from the climate crisis.

4.5.4 Therefore, there are imperative reasons which justify the Proposed Development and override the AEOSI of the SPAs. In reaching this conclusion, the Applicant has considered the scale of the predicted adverse impacts on the SPAs. Whilst taking this into account, as a large-scale OWF, the contribution of the Proposed Development to the imperative public policy objectives and targets described above is overriding.

5 Compensatory Measures

5.1 The Compensation Measures

5.1.1 The RIAA Part 3 – Special Protection Areas ad Ramsar Sites (TWP-BOW-RPS-ENV-RPT-00015) concludes that in-combination AEOSI cannot be ruled out for the SPAs and qualifying features identified in Table 1 As such, the Applicant has identified a suite of compensatory measures which would secure the overall coherence of the National Site Network. The proposed compensatory measures are summarised in Table 5 below.

Table 5: Overview of the Proposed Compensation Measures

Compensation Measure and Species Covered	Measure Description
Predator control/eradication Guillemot, puffin, razorbill, herring gull and kittiwake	Implementation of a predator control/eradication project and subsequent biosecurity to support the recovery of vulnerable seabird species.
Bycatch reduction Gannet	Implementation of measures to reduce the bycatch of gannet in a commercial fishery, reducing mortality.

5.1.2 To give Scottish Ministers confidence that these compensatory measures can be secured and will be effective, summary information on each measure and next steps has been provided in a Compensation Roadmap appended to this Derogation Case.

5.1.3 The Applicant intends to submit a detailed Compensation Plan, post-Application and prior to determination of the Application. The Compensation Plan will present further detail on the potential sites, approach to securing delivery, and the organisations and partners which will help to deliver measures.

5.2 Securing the Compensatory Measures

5.2.1 The requirement to implement the compensatory measures can be adequately secured by means of a suspensive condition on the Section 36 Consent and Marine Licences, in line with the approach taken for West of Orkney OWF.

5.2.2 The impacts identified in the RIAA relate to the Wind Turbines and would occur from the point the Proposed Development becomes operational. It is therefore appropriate for the suspensive condition to require that a detailed CIMP is submitted and approved by the Scottish Ministers before the commencement of the Project.

5.2.3 Wording is proposed below for the suspensive condition.

Detailed Seabird Compensation Plan

1) Unless paragraph 2 applies:

A) No later than six months prior to the implementation of proposed compensatory measures (or such alternative timeframe, as approved in writing by the Scottish Ministers), the Company must submit a detailed

Compensation Implementation and Monitoring Plan (CIMP) in writing to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with NatureScot and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers, which may include a compensatory measures steering group.

B) *The CIMP must be in accordance with the Outline CIMP dated [XX/XX/XXXX], unless otherwise agreed by the Scottish Ministers, and demonstrate that the compensatory measures will compensate for any adverse effects on the Special Protection Areas ("SPAs") as identified and quantified in the Appropriate Assessment for the Project where conclusions of adverse effect on site integrity ("AEOSI") have been drawn. The detailed CIMP must include, but not be limited to, the following:*

   i) *a timetable of implementation and maintenance of the compensatory measures;*

   ii) *the location of the compensatory measures;*

   iii) *a description of the characteristics of the proposed compensatory measures;*

   iv) *the predicted outcomes of each compensatory measure, including timescales of when those outcomes will be achieved;*

   v) *details of monitoring and reporting of the effectiveness of the compensatory measures including: survey and monitoring methods; survey programmes; timescales for monitoring reports to be submitted to the Scottish Ministers; and adaptive management measures and the criteria used to trigger any adaptation of compensatory measures.*

   vi) *details on how the Company will comply with onshore permitting requirements, including SSSI consent (if applicable);*

   vii) *copies of any necessary legal agreements associated with the implementation of the compensatory measures.*

C) *The Company must implement the measures set out in the approved CIMP in full.*

D) *The Commencement of the Development cannot take place without written approval of the CIMP by the Scottish Ministers.*

E) *Any requests for amendments to the approved CIMP must be submitted, in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with NatureScot and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers, which may include a compensatory measures steering group.*

F) *The Company must make such alterations to the approved CIMP as directed by the Scottish Ministers and submit the updated CIMP to the*

Scottish Ministers for approval within such a period as directed in writing by the Scottish Ministers.

G) The Company must notify the Scottish Ministers and NatureScot of the completion of any compensatory measures set out in the CIMP.

2) If the Company wishes to make a payment (or payments) to a Marine Recovery Fund wholly or partly in substitution for the implementation of the CIMP pursuant to paragraphs 1) A) – G), the Company must notify the Scottish Ministers in writing prior to the Commencement of Development. There must be no Commencement of Development until the Scottish Ministers have provided approval in writing to the Marine Recovery Fund payment[s] being made wholly or partly in substitution for the implementation of the CIMP pursuant to paragraphs 1) A) – G). The approval of the Scottish Ministers may include conditions as to the timing and basis of any payment(s) to the Marine Recovery Fund.

prior to the Commencement of Development

Definitions

*"**Marine Recovery Fund"** means a fund established and operated pursuant to section 292 of the Energy Act 2023 for the implementation of strategic compensation, including the Scottish MRF and/or the UK MRF or any equivalent fund established by a Government or public body for that purpose.*

6 Conclusion

6.1.1 The analysis and evidence presented in this Derogation Case demonstrates that there are no feasible alternative solutions which could deliver the project objectives (Section 3).

6.1.2 For the reasons set out in Section 4, there are IROPI that justify authorising the Proposed Development. The IROPI are underpinned by fundamental international and national legal commitments and policy objectives relating to energy security of supply and climate change which are urgent and necessary to protect human health, public safety and the environment.

6.1.3 The documents listed in Section 5 and appended to this Derogation Case describe a suite of viable proposed compensatory measures, with reference to scientific evidence as to their effectiveness.

6.1.4 The compensation measures can be appropriately secured by condition of the Section 36 Consent and wording for a suspensive condition has been set out in Section 5.

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