

## **Marine Directorate - Licensing Operations Team Scoping Opinion**

**Scoping Opinion adopted by the Scottish Ministers  
under:**

**The Marine Works (Environmental Impact Assessment)  
(Scotland) Regulations 2017**

**The Electricity Works (Environmental Impact  
Assessment) (Scotland) Regulations 2017**

**and**

**The Marine Works (Environmental Impact Assessment)  
Regulations 2007**

**Ayre Offshore Wind Farm**

**2 October 2024**

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## **1. Introduction**

### **1.1 Background**

- 1.1.1 On 17 June 2024, the Scottish Ministers received a scoping report (“the Scoping Report”) from Deme Concessions Wind (“the Developer”) as part of its request for a scoping opinion relating to Ayre Offshore Wind Farm (“the Proposed Development”). The Scottish Ministers considered the content of the Scoping Report as sufficient and in accordance with regulation 14 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 MW Regulations”), regulation 12 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 EW Regulations”) and Schedule 4 of The Marine Works (Environmental Impact Assessment) Regulations 2007 (“2007 MW Regulations”), all collectively referred to as “the EIA Regulations”.
- 1.1.2 This scoping opinion is adopted by the Scottish Ministers under the EIA Regulations (“Scoping Opinion”) in response to the Developer’s request and should be read in conjunction with the Scoping Report. The matters contained in the Scoping Report have been carefully considered by the Scottish Ministers and use has been made of professional judgment, based on expert advice from stakeholders and Marine Directorate in-house expertise and experience. This Scoping Opinion identifies the scope of impacts to be addressed and the method of assessment to be used in the Environmental Impact Assessment Report (“EIA Report”) for the Proposed Development.
- 1.1.3 The Scottish Ministers, in adopting this Scoping Opinion, have, in accordance with the EIA Regulations, taken into account the information provided by the Developer, in particular, information in respect of the specific characteristics of the Proposed Development, including its location and technical capacity and its likely impact on the environment. In addition, the Scottish Ministers have taken into account the representations made to them in response to the scoping consultation they have undertaken.
- 1.1.4 In examining the EIA Report, and any other environmental information, the Scottish Ministers will seek to reach an up to date reasoned conclusion on the significant effects on the environment from the Proposed Development. This reasoned conclusion will be considered as up to date if the Scottish Ministers are satisfied that current knowledge and methods of assessment have been taken account of. For the avoidance of doubt, this Scoping Opinion does not preclude the Scottish Ministers from requiring the Developer to submit additional information in connection with any EIA Report submitted with an application for consent under section 36 (“s.36 consent”) of The Electricity Act 1989 (“the 1989 Act”) and marine licences under The Marine (Scotland) Act

2010 (“the 2010 Act”) and The Marine and Coastal Access Act 2009 (“the 2009 Act”).

- 1.1.5 In the event that the Developer does not submit applications for a s.36 consent under the 1989 Act and marine licences under the 2010 Act and the 2009 Act for the Proposed Development within 12 months of the date of this Scoping Opinion, the Scottish Ministers strongly recommend that the Developer seeks further advice from them regarding the validity of the Scoping Opinion.
- 1.1.6 The Scottish Ministers advise that as more than one set of environmental impact assessment regulations apply the most stringent requirements must be adhered to in terms of, for example, consultation timelines and public notice requirements.

## **2. The Proposed Development**

### **2.1 Introduction**

2.1.1 This section provides a summary of the description of the Proposed Development provided by the Developer in the Scoping Report together with the Scottish Ministers' general comments in response. The details of the Proposed Development in the Scoping Report have not been verified by the Scottish Ministers and are assumed to be accurate.

### **2.2 Description of the Proposed Development**

2.2.1 The Proposed Development is comprised of an offshore generating station located approximately 22 kilometres ("km") east of Orkney Mainland in the North Sea. The Proposed Development will have a capacity of greater than 50 megawatts and therefore requires the Scottish Ministers' consent to allow its construction and operation. The Proposed Development will also require a marine licence granted by the Scottish Ministers under the 2009 Act and the 2010 Act, to permit any and all 'licensable marine activities' carried on for the Proposed Development.

2.2.2 The design envelope for the Proposed Development is broad and there are a number of design parameters that are yet to be determined by the Developer. The technology in relation to the wind turbine generator ("WTG") foundations has not been selected but will either be fixed or floating substructures. The area of the Proposed Development in which the WTG, inter-array cables, inter-connector cables, and Offshore Substation Platforms ("OSPs") are located is termed the Array Area and is within the NE2 ScotWind Plan Option. The Array Area is approximately 200km<sup>2</sup>, with the export cable corridor ("ECC") making landfall at Sinclair's Bay on the Caithness coast.

2.2.3 The Proposed Development includes the construction and operation of offshore WTG and all associated offshore infrastructure. The key components of the Proposed Development will be refined as the Project continues to evolve through the key subsequent stages of the design and EIA process. The indicative maximum parameters for the Proposed Development include:

- A maximum of 67 WTG;
- A maximum rotor diameter of 326m;
- A maximum blade tip height of 368.81m (above Lowest Astronomical Tide ("LAT"));
- A minimum blade tip height of 24.81m (above LAT);
- A maximum hub height of 205.81m (above LAT);
- Foundation options being considered include;
  - Tension Leg Platform,
  - semi-submersible,

- piled and/or drilled jacket foundations,
  - and jacket foundations with suction buckets.
  - Scour protection consisting of either rock placement, rock bags, and concrete mattresses.
  - Up to 4 offshore export cables, each up to 90km in length, with a target burial depth between 1m and 3m;
  - Installation methods of the offshore export cables being considered include the pre-lay plough, plough, trenching, cutting and/ or jetting methods; and,
- 2.2.4 The maximum parameters for OSPs include up to three OSPs and associated support structures and foundations. The OSPs topsides will be up to 100m in length and 100m in width and be up to 25m above LAT with jacket piled foundations. Inter-array cabling linking the individual WTGs to each other and with the OSPs up to a total length of 185m. Dynamic and static inter-array cabling are being considered.
- 2.2.5 The Developer expects to apply for Safety Zones under the Energy Act 2004 during construction and major maintenance activities, and around certain offshore structures during the Operation and Maintenance phase.
- 2.2.6 It is estimated that the Proposed Development will generate approximately 1 gigawatt of energy.
- 2.2.7 The construction of the Proposed Development is anticipated to take up to 5 years as noted in Section 3.10 of the Scoping Report.

## **2.3 Onshore Planning**

- 2.3.1 The Scottish Ministers are aware the Developer has sought and received a separate scoping opinion from The Highland Council for the associated onshore infrastructure works. It is essential that the EIA Report concerning onshore works will be available at the time that the EIA Report for the Proposed Development is being considered so that all the information relating to the project as a 'whole' is presented. The EIA Report for the Proposed Development must consider the cumulative impacts with the onshore works.

## **2.4 The Scottish Ministers' Comments**

### *Description of the Proposed Development*

- 2.4.1 The Scottish Ministers acknowledge that the inter-array cables that connect the WTGs to the OSPs depend on which WTG foundation technology will be deployed. The Scottish Ministers also acknowledge the Developer's consideration of using subsea collectors to connect the WTG in clusters to the OSPs. The Scottish Ministers advise that it must be clear in the EIA Report

which inter-array cable options are being considered within the design envelope.

- 2.4.2 Section 3.5.1 of the Scoping Report states that the final number and layout of the WTGs will be determined based on the generating capacity of the individual WTG along with the results of impact assessments, environmental and engineering surveys, turbine type availability, and design and engineering activities. The Scottish Ministers advise that the EIA Report must include a full and detailed description of all WTG parameters and WTG types considered within the design envelope. The Scottish Ministers highlight the Scottish Fishermen's Federation representation and its request for higher capacity WTGs to increase the minimum spacing between turbines from 826m to 1.5km.
- 2.4.3 Preferred WTG foundations, mooring lines, and anchor options are provided in Table 3.3 of the Scoping Report. The Scottish Ministers acknowledge that the maximum parameters are subject to further design review. The Scottish Ministers advise that it must be clear in the EIA Report which parameters are being assessed. If the parameters have not yet been decided, the EIA Report must include a full and detailed description of all layout options considered within the design envelope.
- 2.4.4 The Scottish Ministers were content to consult on the scoping opinion without coordinates included. However, the coordinates must be included alongside the EIA Report detailing the outline of the offshore turbine array.
- 2.4.5 Section 3.8 of the Scoping Report states that scour protection may be utilised to mitigate the likelihood of scour developing around the WTGs, the OSP foundations, mooring, and anchoring systems. For the avoidance of doubt, the use of scour protection must be assessed in the EIA Report including details on materials, quantities, and location.
- 2.4.6 Section 3.12 of the Scoping Report acknowledges the Developer's requirement to prepare a decommissioning programme in line with Section 105 of the Energy Act 2004. The Scoping Report states that specific details on decommissioning activities are not known at this stage; however, the EIA Report will present an overview of the anticipated decommissioning events, including an assessment of the potential significant environmental effects decommissioning may present to receptors. The Scottish Ministers advise that any uncertainty on the impacts upon receptors during decommissioning should be clearly explained, along with the implications for the assessment of significant effects.
- 2.4.7 The Scottish Ministers acknowledge Section 3.7 of the Scoping Report which notes seabed preparation works including identifying Unexploded Ordnance



(“UXO”) through UXO survey(s) and risk strategy. The Scottish Ministers advise that the EIA Report must include a full consideration of the options that will be assessed in relation to UXO clearance, the differences amongst them, and an assessment of the environmental effects of these options. In this regard, the Scottish Ministers advise that the EIA Report must include a worst-case scenario of high-order denotation in terms of impact and mitigation unless there is robust supporting evidence that can be presented to show the consistent performance of the preferred low-order or deflagration method.

- 2.4.8 Any seabed levelling or removal of substances or objects from on or over the seabed, required for the installation of inter-array or inter-connector cables will require consideration in the EIA Report and may also require a separate marine licence. Should seabed preparation involve dredging, as noted in Table 3.12 of the Scoping Report, the EIA Report must identify the quantities of dredged material and identify the likely location for deposit. The Developer may also be required to submit a pre-dredge sample analysis, this should include supporting the characterisation of the new and existing deposit sites.
- 2.4.9 The Scottish Ministers, in line with the Transport Scotland advice, advise that the EIA Report should assess the potential impact of the transport of materials on the trunk road network and include an abnormal loads assessment report should WTG components require to be transported by road to ports prior to assembly. This report should identify key pinch points on the trunk road network.
- 2.4.10 Section 3.9 of the Scoping Report notes the potential that ‘wet storage’ may be needed to facilitate the construction of the Proposed Development. The Scottish Ministers are considering their position on this topic and will advise of any updates.
- 2.4.11 The Scottish Ministers note that whilst there is no data that directly overlaps with the Proposed Development, various Priority Marine Features (“PMFs”) have been recorded in adjacent areas. As such, the Scottish Ministers advise the Developer to further consider PMFs and possible impact pathways in the EIA Report. The Developer should engage with NatureScot on this matter as the Proposed Development progresses through the EIA process.
- 2.4.12 Table A1.1 within the Scoping Report lists the Developers proposed schedule of mitigation and commitments. Several of these mitigation commitments reference post-consent plans. Where possible, and certainly where such plans are proposed as mitigation, these plans should be submitted alongside the marine licence application and the EIA Report. The Scottish Ministers highlight that adherence to post-consent plans does not strictly constitute mitigation, rather it is the measures contained within the plan that will mitigate impacts. As such, the Scottish Ministers advise that the EIA Report must clearly

articulate mitigation measures that are informed by the EIA, or the HRA and are necessary to avoid or reduce predicted significant adverse environmental effects of the Proposed Development. The Scottish Ministers advise that the full range of mitigation and monitoring measures, and published guidance, is considered and discussed within the EIA Report. Additionally, the Scottish Ministers advise the Developer to engage with relevant stakeholders, including but not limited to NatureScot, when developing such mitigation and monitoring measures.

- 2.4.13 The Scottish Ministers acknowledge that further engagement will be undertaken during the pre-application stage as noted in Section 5.5 of the Scoping Report. The Scottish Ministers welcome extensive stakeholder engagement but note that the Marine Directorate – Licensing and Operations Team (“MD-LOT”) will only engage with the Developer where further engagement has been requested or as required regarding any strategic and guidance updates.
- 2.4.14 The Scottish Ministers acknowledge that the Developer submitted its Habitats Regulations Appraisal (“HRA”) Screening Report to MD-LOT on 23 August 2024 in accordance with the HRA Regulations. The Scottish Ministers advice to the HRA Screening Report will be provided separately from this Scoping Opinion.

### *Design Envelope*

- 2.4.15 The Scottish Ministers note the Developer’s intention to apply a ‘Design Envelope’ approach. Where the details of the Proposed Development cannot be defined precisely, the Developer will apply a worst case scenario, as set out in section 3.2 of the Scoping Report.
- 2.4.16 The Scottish Ministers advise that the Developer must make every attempt to narrow the range of options. Where flexibility in the design envelope is required, this must be defined within the EIA Report and the reasons for requiring such flexibility clearly stated. At the time of application, the parameters of the Proposed Development should not be so wide-ranging as to represent effectively different projects. To address any uncertainty, the EIA Report must consider the potential impacts associated with each of the different scenarios. The criteria for selecting the worst case and the most likely scenario, together with the potential impacts arising from these, must also be described. The parameters of the Proposed Development must be clearly and consistently defined in the application for the s.36 consent and marine licences and the accompanying EIA Report.
- 2.4.17 The Scottish Ministers will determine the applications based on the worst case scenario. The EIA will reduce the degree of design flexibility required and the

detail may be further refined in a Construction Method Statement (“CMS”) to be submitted to the Scottish Ministers, for their approval, before works commence. Please note however, the information provided in Section 7 below regarding multi-stage consent and regulatory approval. The CMS will ‘freeze’ the design of the project and will be reviewed by the Scottish Ministers to ensure that the worst case scenario described in the EIA Report is not exceeded.

- 2.4.18 It is a matter for the Developer, in preparing the EIA Report, to consider whether it is possible to robustly assess a range of impacts resulting from a large number of undecided parameters. If the Proposed Development or any associated activities materially change prior to the submission of the EIA Report, the Developer may wish to consider requesting a new scoping opinion.

### *Alternatives*

- 2.4.19 The EIA Regulations require that the EIA Report include ‘a description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the Developer, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects’. The Scottish Ministers acknowledge section 6 of the Developer’s Scoping Report setting out the consideration of alternatives to date together with the planned activities that are proposed to inform the EIA Report further. The Scottish Ministers advise that these considerations must include how decommissioning has been taken into account within the design options. The Scottish Ministers advise that this must be based on the presumption of as close to full removal as possible of all infrastructure and assets and should consider the methods and processes of doing so.
- 2.4.20 For the avoidance of doubt, the Scottish Ministers advise that the EIA Report must include an up to date consideration of the reasonable alternatives studied as the parameters of the Proposed Development have been refined. This includes but is not limited to the identification of the potential WTG layouts within the array area, the parameters of the export cables, the cable corridor options and the landfall location or locations. The Scottish Ministers expect this to comprise a discrete section in the EIA Report that provides details of the reasonable alternatives studied across all aspects of the Proposed Development and the reasoning for the selection of the chosen option(s), including a comparison of the environmental effects.

### **3. Contents of the EIA Report**

#### **3.1 Introduction**

- 3.1.1 This section provides the Scottish Ministers' general comments on the approach and content of information to be provided in the Developer's EIA Report, separate to the comments on the specific receptor topics discussed in section 5 of this Scoping Opinion.

#### **3.2 EIA Scope**

- 3.2.1 Matters are not scoped out unless specifically addressed and justified by the Developer and confirmed as being scoped out by the Scottish Ministers. The matters scoped out should be documented and an appropriate justification noted in the EIA Report.

#### **3.3 Mitigation and Monitoring**

- 3.3.1 The Developer has committed to several embedded mitigation measures and commitments as seen in Table A1.1 of the Scoping Report, including but not limited to a Cable Plan, a Cable Burial Risk Assessment ("CBRA"), a CMS and an Environmental Management Plan ("EMP"). Any embedded mitigation relied upon for the purposes of the assessment should be clearly and accurately explained in detail within the EIA Report. The likely efficacy of the mitigation proposed should be explained with reference to residual effects. The EIA Report must identify and describe any proposed monitoring of significant adverse effects and how the results of such monitoring would be utilised to inform any necessary remedial actions.
- 3.3.2 The EIA Report should clearly demonstrate how the Developer has had regard to the mitigation hierarchy, including giving consideration to the avoidance of key receptors. The Scottish Ministers advise that where the mitigation is envisaged to form part of a management or mitigation plan, the EIA Report must set out these plans or the reliance on these in sufficient detail so the significance of the residual effect can be assessed and evaluated. This should also include identification of any monitoring and remedial actions (if relevant) in the event that predicted residual effects differ to actual monitored outcomes. Commitment to develop plans without sufficient detail is not considered to be suitable mitigation in itself.
- 3.3.3 The EIA Report must include a table of mitigation which corresponds with the mitigation identified and discussed within the various chapters of the EIA Report and accounts for the representations and advice attached in Appendix I.

- 3.3.4 Where potential impact on the environment have been fully investigated but found to be of little or no significance, it is sufficient to validate that part of the assessment by detailing in the EIA Report, the work that has been undertaken, the results, what impact, if any, has been identified and why it is not significant.

## 4. Consultation

### 4.1 The Consultation Process

4.1.1 Following receipt of the Scoping Report, the Scottish Ministers, in accordance with the EIA Regulations, initiated a 30 day consultation process, which commenced on 4 July 2024. The following bodies were consulted, those marked in bold provided a response, and those marked in italics sent nil returns or stated they had no comments:

- Beatrice Offshore Wind Farm
- **British Telecom (“BT”)**
- Broadshore Hub Offshore Wind Farms
- Buchan Offshore Wind
- **Caithness District Salmon Fishery Board (“Caithness DSFB”)**
- Caledonia Offshore Wind Farm
- Civil Aviation Authority
- Crown Estate Scotland
- Cruise Association
- *Department of Agriculture, Environment and Rural Affairs*
- EMEC - Fall of Warness/ Shapinsay Sound
- **Fisheries Management Scotland (“FMS”)**
- **Highland and Islands Airports Limited (“HIAL”)**
- **Historic Environment Scotland (“HES”)**
- *Joint Nature Conservation Committee*
- **Joint Radio Company**
- Marine Safety Forum
- **Maritime and Coastguard Agency (“MCA”)**
- MarramWind Offshore Wind Farm
- MeyGen tidal-stream energy project
- **Ministry of Defence (“MOD”)**
- Moray East Offshore Wind farm
- Moray West Offshore Wind Farm
- **National Air Traffic Service (“NATS”)**
- National Grid
- National Trust for Scotland
- *Natural England*
- **NatureScot**
- **Northern Lighthouse Board (“NLB”)**
- Northlink Ferries
- Offshore Energies UK
- **Orkney Islands Council (“OIC”)**

- Planning
- **Royal Yachting Association Scotland (“RYA Scotland”)**
- **Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)**
- Scottish Canoe Association
- Scottish Creel Fishermen's Federation
- *Scottish Environment Protection Agency (“SEPA”)*
- **Scottish Fishermen's Federation (“SFF”)**
- Scottish Fishermen's Organisation
- Scottish Surfing Federation
- **Scottish Water**
- Scottish White Fish Producers Association
- Scottish Wildlife Trust
- *Sport Scotland*
- Stromar Offshore Wind Farm
- Surfers Against Sewage
- *The Highland Council*
- **UK Chamber of Shipping (“UKCoS”)**
- Visit Scotland

4.1.2 Specific advice was sought from Marine Directorate Science, Environment, Digital and Data (“MD-SEDD”) and Transport Scotland.

## **4.2 Responses received**

4.2.1 From the list above a total of 23 responses were received. Advice was also provided by MD-SEDD and TS. The purpose of the consultation was to seek representations to aid the Scottish Ministers’ consideration of which potential effects should be scoped in or out of the EIA Report.

4.2.2 The Scottish Ministers are satisfied that the requirements for consultation have been met in accordance with the EIA Regulations. The sections below highlight issues which are of particular importance with regards to the EIA Report and the s.36 consent and marine licence applications. The representations and advice received are attached in Appendix I and each must be read in full for detailed requirements from individual consultees.

## 5. Interests to be considered within the EIA Report

### 5.1 Introduction

- 5.1.1 This section contains the Scottish Ministers' opinion on whether the impacts identified in the Scoping Report are scoped in or out of the EIA Report. The Scottish Ministers advise that the representations from consultees and advice from MD-SEDD and TS must be considered in conjunction with the Scoping Opinion and with the expectation that recommendations and advice as directed through this Scoping Opinion are implemented.

### 5.2 Physical Processes

- 5.2.1 The Scottish Ministers are content with the study area noted in Section 7.2.1 of the Scoping Report. The Scottish Ministers are also content with the data sources provided in Table 7.1 of the Scoping Report, however, note that Hansom et al. (2017) was an output of Dynamic Coast phase 1, which has since been superseded by phase 2 outputs. The updated outputs, including new reports<sup>1</sup> and webmapping<sup>2</sup> of coastal change, should be used as a data source for the EIA Report. This is supported by NatureScot. The MD-SEDD advice received 13 August 2024 provides additional publications and data sources, mainly focusing on tidal and water column processes omitted from the Scoping Report. The Scottish Ministers advise the Developer to consider these additional sources as part of its EIA Report.
- 5.2.2 The Scottish Ministers acknowledge Section 7.4.20 of the Scoping Report which notes that consideration will be given to changes to the physical characteristics of designated sites. The Scottish Ministers, in line with the NatureScot representation, are content with the Developer's approach, especially for sites such as the Noss Head Marine Protected Area ("MPA"), whereby indirect impacts may arise on the horse mussel beds from increases to suspend sediment concentration and changes in physical processes.
- 5.2.3 In Table 7.2 of the Scoping Report the Developer summarises the physical processes impacts to be scoped in for further assessment within the EIA Report. The Scottish Ministers, in line with the MD-SEDD advice received 13 August 2024, agree with the impacts scoped in; however, highlight the NatureScot representation which advises that the potential re-exposure of a trenched cable(s) at landfall(s) should be assessed as an additional operational impact. The Scottish Ministers note that this impact is referenced within Table 5.2 of the Scoping Report; however, is missing from Table 7.2, and advise the Developer to assess this operational impact within the EIA

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<sup>1</sup> Dynamic Coast – Reports <https://www.dynamiccoast.com/reports>

<sup>2</sup> Dynamic Coast – Webmaps <https://www.dynamiccoast.com/webmaps>



Report. Additionally, the Scottish Ministers advise that potential secondary scour from scour protection itself should be scoped in for further assessment. This is supported by NatureScot.

- 5.2.4 The Scottish Ministers acknowledge Section 7.7.4 within the Scoping Report with notes that a combination of analytical methods will be used to assess the potential changes to physical processes within the EIA Report. The Scottish Ministers advise that the NatureScot advice issued to the Developer on 11 July 2024 regarding the required greater detail for the modelling proposed is considered in full within the EIA Report.
- 5.2.5 The Scottish Ministers advise that the MD-SEDD advice received on 13 August 2024 regarding tidal and water column processes should be considered in full within the EIA Report.
- 5.2.6 The Scottish Ministers acknowledge Section 7.9.2 of the Scoping Report which identifies several impacts from the Proposed Development which have the potential to act cumulatively with impacts from other developments to contribute to cumulative effects. The Scottish Ministers are content with the impacts proposed. This is supported by NatureScot.
- 5.2.7 The Scottish Ministers, in line with the NatureScot representation, agree that transboundary impacts can be scoped out from further consideration in the EIA Report.

### **5.3 Subsea Noise**

- 5.3.1 In Table 8.2 of the Scoping Report the Developer summarises the subsea noise impacts to be scoped in for further assessment within the EIA Report. The Scottish Ministers note that injury ranges for marine mammals and fish will be estimated for clearance of UXO. The Scottish Ministers advise that disturbance is also assessed using Temporary Threshold Shift as a proxy. This is supported by NatureScot.
- 5.3.2 Table C1.3 within Appendix C of the Scoping Report provides a summary of the approach to the modelling of disturbance to marine mammals from all sources. The Scottish Ministers agree that the dose-response approach should be used for piling, however, note that Graham et al. (2017) should be used for cetaceans. Additionally, in line with the NatureScot representation, for impulsive noise sources, the Scottish Ministers advise presenting thresholds as peak, instead of rms, to allow comparison with the Southall thresholds.
- 5.3.3 The Scottish Ministers acknowledge the MPA screening assessment included in Appendix D of the Scoping Report. This assessment concludes that underwater noise will not be capable of affecting, other than insignificantly, the qualifying sandeel species of the North-West Orkney MPA, and is therefore

proposed to be screened out. As underwater noise modelling is still to be undertaken the Scottish Ministers consider it premature to scope out effects on the North-West Orkney MPA at this stage. This is supported by NatureScot.

- 5.3.4 The Scottish Ministers have provided specific receptor advice with regard to subsea noise in Section 5.5.6 and Section 5.7.4 below.

## **5.4 Benthic Ecology**

- 5.4.1 The Scottish Ministers are broadly content with the study area noted in Section 9.2.1 of the Scoping Report but highlight the SFF representation regarding herring spawning habitats which should be considered in full within the EIA Report. The Scottish Ministers acknowledge that the Developer has defined a regional study area that extends further into the northern North Sea. The Scottish Ministers, in line with the NatureScot representation, are content with the regional study area proposed.
- 5.4.2 The Scottish Ministers acknowledge that site-specific subtidal benthic ecology data for the study area was collected during a subtidal survey campaign in spring 2024; therefore, the outcomes are not provided within the Scoping Report. Whilst the Scottish Ministers are content with the approach suggested within Section 9.3 of the Scoping Report for how the outcomes from the surveys will be incorporated into the EIA Report, we advise that if there are any unexpected survey results, including unidentified benthic PMFs, these should be flagged to the relevant stakeholders prior to application submission. This is supported by NatureScot and OIC.
- 5.4.3 The Scottish Ministers highlight the NatureScot representation concerning a blue carbon assessment. The Scottish Ministers advise that consideration should be given to impacts on blue carbon as a result of the Proposed Development, as well as an expanded assessment for benthic ecology to focus on the potential impacts of marine sediments and coastal habitats.
- 5.4.4 The Scottish Ministers acknowledge the phase 1 intertidal walkover survey report in Appendix E within the Scoping Report. The Scottish Ministers are content with the information within the report but note that the survey only covered a small part of the shoreline within the ECC boundary. The Scottish Ministers, in line with the NatureScot representation, note that it would be helpful to include an additional narrative on why only a small section of the ECC boundary was surveyed.
- 5.4.5 In Table 9.4 and Table 9.5 of the Scoping Report the Developer summarises the benthic ecology impacts to be scoped in and scoped out of further assessment within the EIA Report. The Scottish Ministers are broadly content with the impacts proposed to be scoped in; however, advise that

Electromagnetic Field (“EMF”) should be scoped in for all cabling. The Scottish Ministers acknowledge that burial of the cable will reduce the level of EMF at the seabed surface, but burial will not completely remove the possibility of EMF effects on benthic species. This is supported by NatureScot and the SFF.

- 5.4.6 With regards to EMF, the Scottish Ministers, in line with the NatureScot representation, advise that EMF impacts should be assessed on a cumulative basis for benthic ecology.
- 5.4.7 The Scottish Ministers are broadly content with the guidance documents considered in Section 9.7.1 of the Scoping Report. The NatureScot representation provides an additional publication omitted from this chapter. The Scottish Ministers advise the Developer to consider this additional publication as part of its EIA Report.
- 5.4.8 The Scottish Ministers, in line with the NatureScot representation, agree that transboundary impacts can be scoped out from further consideration within the EIA Report.

## **5.5 Fish and Shellfish Ecology**

- 5.5.1 The Scottish Ministers acknowledge Section 10.2.1 of the Scoping Report which notes that the fish and shellfish study area has been defined as a 100km buffer around the Proposed Development, which includes the offshore ECC. The Scottish Ministers, in line with the NatureScot representation, are content with the study area proposed.
- 5.5.2 The Scottish Ministers are broadly content with the data sources considered in Table 10.1 of the Scoping Report. The NatureScot representation provides additional data sources recommended for use when considering basking sharks. The Scottish Ministers advise the Developer to consider these additional data sources as part of its EIA Report.
- 5.5.3 With regards to basking sharks, the Scottish Ministers note this species is briefly discussed within Appendix C of the Scoping Report, but there is no discussion within the baseline characterisation in either the fish and shellfish receptor chapter or the marine mammal’s receptor chapter. The Scottish Ministers would expect to see further consideration of basking sharks and potential impact pathways within the EIA Report. This is supported by NatureScot.
- 5.5.4 As noted in Section 5.4.2 of this Scoping Opinion, the results of the site-specific subtidal benthic ecology data are not provided within the Scoping Report. The Scottish Ministers advise that once the data is analysed and if it indicates that other species are present, then these additional species should be included in the EIA Report. Additionally, the benthic ecology survey

sampling should be used to determine suitable sandeel habitat and/or herring spawning habitat. This is supported by NatureScot.

- 5.5.5 Table 10.6 and Table 10.7 within the Scoping Report note the impacts proposed to be scoped into and scoped out of the fish and shellfish ecology assessment. The Scottish Ministers, in line with the SFF representation, advise that the accidental pollution to the surrounding environment is scoped in for further assessment within the EIA Report. Additionally, the Scottish Ministers, in line with the Caithness DSFB and the FMS representations, advise that shadow flicker from moving turbines and the direct visual effects of moving turbines should be scoped in for further assessment within the EIA Report.
- 5.5.6 The Scottish Ministers acknowledge the subsea noise modelling method statement included in Appendix C of the Scoping Report. Table C1.7 within this appendix notes the assessment of swim speeds of marine mammals and fish that are likely to occur within the North Sea for exposure modelling. The Scottish Ministers, in line with the NatureScot representation, are content that most fish will flee from disturbance; however, if sandeel habitat or spawning herring grounds are identified, the Scottish Ministers recommend that these are assessed as stationary.
- 5.5.7 The Scottish Ministers, in line with the NatureScot representation, advise that the EIA Report should clearly set out the impacts to key prey species and their habitats arising from the Proposed Development alone and cumulatively with other wind farms. The Scottish Ministers acknowledge the need to understand impacts at the ecosystem scale; therefore, advise that consideration across key trophic levels will enable a better understanding of the consequences of any potential changes in prey distribution and abundance on marine mammal interests and how this may influence population level impacts. Additionally, the Scottish Ministers advise that consideration of how this loss and or disturbance may affect the recruitment of key prey (fish) species through impacts to important spawning or nursery ground habitats should also be assessed within the EIA Report. The Predators and Prey Around Renewable Energy Developments project<sup>3</sup> may be helpful when carrying out this assessment. This is supported by NatureScot.
- 5.5.8 With regards to EMF, the Scottish Ministers, in line with the NatureScot representation, advise that EMF impacts should be assessed on a cumulative basis for fish and shellfish ecology.
- 5.5.9 The Scottish Ministers acknowledge Section 10.5.1 within the Scoping Report which notes the relevant embedded mitigation measures to fish and shellfish

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<sup>3</sup> PrePARED – An offshore renewables science project <https://owecprepared.org/>

ecology. These measures do not directly relate to fish and shellfish but will indirectly reduce the impacts of the Proposed Development on fish and shellfish receptors. The Scottish Ministers acknowledge that these measures will evolve throughout the EIA process and, therefore, are content with what is presented; however, should the EIA assessment show that further mitigation is needed for fish and shellfish this should be addressed within the EIA Report.

- 5.5.10 The Scottish Ministers, in line with the NatureScot representation, agree that transboundary impacts can be scoped out from further consideration within the EIA Report.
- 5.5.11 The Scottish Ministers advise that the Caithness DSFB and the FMS representations should be considered in full within the EIA Report. Particularly when addressing the potential the Proposed Development has on, directly and indirectly, impacting diadromous fish.
- 5.5.12 With regards to the HRA Screening Report, based on the evidence currently available, it is not possible to carry out an assessment of diadromous fish to the level required under HRA. The Scottish Ministers therefore advise that diadromous fish species should be assessed through EIA only and not through HRA. This is in line with the NatureScot representation.

## **5.6 Marine Mammals**

- 5.6.1 The Scottish Ministers are broadly content with the study areas described in Section 11.2.1 of the Scoping Report. The Scottish Ministers, in line with the NatureScot representation, note that the UK portion of the Management Unit should be used in the EIA Report.
- 5.6.2 With regards to baseline characterisation, the Scottish Ministers are broadly content with the proposed data sources, however, refer the developer to the NatureScot representation regarding further recommended data sources omitted from the Scoping Report. The highest density estimate for each species should be used from Digital Aerial Surveys (“DAS”) and SCANS, the advice from NatureScot in this regard must be fully addressed in the EIA Report. The Scottish Ministers draw attention to the advice provided by NatureScot on the absence of seal population estimates in SCOS 2023. The Scottish Ministers recommends the Developer to review and incorporate the most recent SCOS report when undertaking the marine mammal assessment within the EIA Report.
- 5.6.3 The Scottish Ministers advise that alongside the species the Developer has scoped in for assessment, long finned pilot whales must be included qualitatively. Additionally, the Scottish Ministers, in line with the NatureScot representation, advise that common dolphins should be scoped in for further assessment due to numbers recorded within the site-specific DAS.

Additionally, the Developer must also fully address the NatureScot representation regarding Otters in the EIA Report.

- 5.6.4 The Scottish Ministers are generally content with the impacts scoped in as per Table 11.7 of the Scoping Report; however, advise that indirect impacts from EMF should be scoped in for further assessment within the EIA Report. This is supported by NatureScot.
- 5.6.5 The Scottish Ministers are content with the approach to assessment as detailed in the Scoping Report and highlight the advice relating to sensitivity and magnitude scoring included in the NatureScot representation. The Scottish Ministers advise that the NatureScot representation with regards to the approach to assessment should be fully considered and implemented in the EIA Report.
- 5.6.6 The Scottish Ministers acknowledge the approach to the cumulative assessment noted in Section 11.9 of the Scoping Report. The Scottish Ministers highlight the NatureScot representation and advise that consideration should be given for a year on either side of the Proposed Development, looking at both the temporal and spatial overlap.
- 5.6.7 The Scottish Ministers acknowledge Section 11.5 within the Scoping Report that notes the embedded mitigation measures relevant to marine mammals. The Scottish Ministers, in line with the NatureScot representation, recommend the Scottish Marine Wildlife Watching Code<sup>4</sup> (“SMWWC”) be used to minimise disturbance to marine mammals, and if possible, night vision binoculars are used in poor visibility at night. Mitigation used for marine mammals should also be applied to basking sharks. The Scottish Ministers advise that if Uncrewed Surface Vehicles or Autonomous Underwater Vehicles are to be used, to consult with NatureScot to agree on appropriate mitigation for basking sharks and marine mammals.
- 5.6.8 The Scottish Ministers, in line with the NatureScot representation, agree that transboundary impacts can be scoped out from further consideration within the EIA Report.

## **5.7 Offshore Ornithology**

- 5.7.1 The Scottish Ministers are broadly content with the study areas as described in Section 12.2 of the Scoping Report, however, draw attention to the advice from NatureScot regarding wider study areas to account for designated Special Protected Areas situated outside of the offshore study area.

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<sup>4</sup> Scottish Marine Wildlife Watching Code - NatureScot <https://www.nature.scot/professional-advice/land-and-sea-management/managing-coasts-and-seas/scottish-marine-wildlife-watching-code>

- 5.7.2 With regards to baseline characteristics the Scottish Ministers acknowledge Table 12.1 in the Scoping Report which notes technical guidance, key data and information resources that will be utilised to inform the ornithology assessment. However, the Scottish Ministers, in line with the NatureScot representation, highlight that it is difficult to determine whether these resources are adequate as insufficient information is provided. The Scottish Ministers direct the Developer to the NatureScot representation regarding this matter.
- 5.7.3 The Scottish Ministers acknowledge the Developers intent to refer to current and previous offshore wind project for relevant information. The Scottish Ministers do not recommend the Developer use the [West Of Orkney Wind Farm 2023 EIA Report Volume 3 figures, particularly in relation to the ornithology section, within its cumulative assessment](#). This is supported by NatureScot. MD-LOT will provide further advice on this when available.
- 5.7.4 The Scottish Ministers are generally content with the impacts scoped in as per Table 12.4 of the Scoping Report; however, advise that direct impacts to seabirds from the detonation of UXO should also be included. This is supported by NatureScot. Additionally, the Scottish Ministers, in line with the NatureScot representation, agree that the impacts from attraction to lights should not only consider turbine lighting but also lighting on servicing or construction vessels. The Scottish Ministers advise that the NatureScot representation regarding this must be fully considered and addressed in the EIA Report.
- 5.7.5 The Scottish Ministers are broadly content with the approach to assessment as detailed in the Scoping Report and highlight the advice relating to MRSea, availability bias, collision risk modelling, apportioning, and population viability analysis (“PVA”) included in the representation by NatureScot. The Scottish Ministers advise that the NatureScot representation on this should be fully considered and implemented in the EIA Report.
- 5.7.6 The Scottish Ministers advise for displacement assessment that SeabORD be used during the assessment of distributional effects during chick rearing season for the below species.
- Guillemot, *Uria aalge*;
  - Razorbill, *Alca torda*;
  - Puffin, *Fratercula artica*; and,
  - Kittiwake, *Rissa tridactyla*.

Additionally, the Scottish Ministers advise the Developer to include impacts on Manx Shearwater, petrel species, and fulmar. This is supported by the NatureScot and RSPB Scotland representations.

- 5.7.7 The Scottish Ministers note there is no mention of Highly Pathogenic Avian Influenza (“HPAI”) within the Scoping Report and its impacts on seabird populations. The Scottish Ministers highlight the NatureScot and RSPB Scotland representations regarding HPAI and expect the impact of HPAI on colonies to be considered qualitatively in the EIA Report.
- 5.7.8 The Scottish Ministers are content with the approach to the cumulative assessment as described in Section 12.10 of the Scoping Report. The Scottish Ministers, in line with the NatureScot representation, agree that if the Cumulative Effects Framework is published within the project timeframe, then it should be used to undertake the cumulative assessment.
- 5.7.9 The Scottish Ministers are aware that the Proposed Development has the potential to result in cumulative impacts in combination with the proposed Berwick Bank Offshore Wind Farm (“Berwick Bank”) development. At the point of this Scoping Opinion, the outcome of the Berwick Bank consenting application is unknown. As such, the Scottish Ministers advise the Developer to conduct a PVA for any seabird species which may be impacted by the Proposed Development based both on the scenario of Berwick Bank being consented and it not being consented.
- 5.7.10 The Scottish Ministers acknowledge Section 12.6 within the Scoping Report which notes the relevant embedded mitigation measures suggested to minimise potential impacts on offshore ornithology. The NatureScot representation provides additional embedded mitigation measures omitted from this chapter. This Scottish Ministers advise the Developer to consider these additional measures as part of its EIA Report.
- 5.7.11 With regards to transboundary impacts, considered in Section 12.11 of the Scoping Report, the Scottish Ministers, in line with the NatureScot representation, support the approach proposed by the Developer.

## **5.8 Commercial Fisheries**

- 5.8.1 The Scottish Ministers are generally content with the study area identified in Section 13.2 of the Scoping Report.
- 5.8.2 The Scottish Ministers are broadly content with the data sources used to characterise the baseline. The Scottish Ministers request that the Developer follow the MD-SEDD advice received on 13 August 2024, regarding the EMODNet Automatic Identification System (“AIS”) data and the use of ScotMap data to further inform the baseline characterisation. The Scottish Ministers highlight the recommendations from the SFF to use fishing plotter data from fishermen, SFF, and relevant associations.



- 5.8.3 With regards to the proposed assessment methodology, the Scottish Ministers are broadly content with the proposed approach. The Scottish Ministers advise that consultation with the commercial fishing industry should include the Orkney Regional Inshore Fisheries Group. This is supported by the OIC.
- 5.8.4 The Scottish Ministers agree with the impacts scoped into the EIA Report, however, highlight the SFF representation and advise that the worst case scenario is assessed in relation to long-term loss and/or restricted access to fishing grounds.
- 5.8.5 The Scottish Ministers, in line with the SFF representation, are content with the embedded mitigations proposed in Section 13.5.1 of the Scoping Report. The Scottish Ministers, in line with Section 2.4.12 of this Scoping Opinion, remind the Developer that adherence to post-consent plans, such as the development of a CBRA and an EMP does not strictly constitute mitigation, rather it is the measures contained in the plan that will mitigate impacts. The Scottish Ministers highlight the additional proposals for mitigation within the SFF representation which should be considered in the EIA Report.

## **5.9 Shipping and Navigation**

- 5.9.1 The Scottish Ministers are broadly content with the study area identified in Section 14.2 of the Scoping Report. The Scottish Ministers acknowledge Section 14.4.14 of the Scoping Report that notes the data from the vessel traffic survey to the standard of Marine Guidance Note (“MGN”) 654 was unavailable at the time of submission of the Scoping Report. The Scottish Ministers, in line with the MCA representation, remind the Developer that the MGN 654 compliant data must be presented in the EIA Report.
- 5.9.2 With regards to baseline characterisation, the Scottish Ministers are broadly content with the proposed data sources. The Scottish Ministers, in line with the SFF representation, advise the Developer to utilise fishing data from fishermen to gain a realistic track of fishing vessel activities in the study area. The UKCoS representation provides additional data sources omitted from this chapter. The Scottish Ministers advise the Developer to consider these additional data sources as part of its EIA Report.
- 5.9.3 The Scottish Ministers, in line with the NLB representation, advise that consideration is given within the EIA Report to the potential impact that a wreck (of a vessel of WTG) could have upon navigation. The Scottish Ministers, in line with the RYA Scotland representation, advise scoping in the potential impact of the loss of Aids to Navigations as rectifying damage may take some weeks. Additionally, the Developer must also fully address the MCA representation regarding potential impacts on navigational issues for both commercial and recreational craft in the EIA Report. The Scottish Ministers

highlight representations from UKCoS, that potential impacts from the movement of unusual structures, such as the towing of rigs, should be considered in the EIA Report, along with potential impacts from loss of station and loss of connection from towing.

- 5.9.4 The Scottish Ministers confirm that, in line with the MCA representation, the Developers will be required to submit a Navigational Risk Assessment (“NRA”) and a Vessel Traffic Survey in accordance with MGN 654, accompanied by a detailed MGN 654 checklist. Hydrographic surveys should fulfil the requirements set out in Annex 4 of MGN 654. The Scottish Ministers advise the Developer to engage with relevant stakeholders, including but not limited to RYA Scotland, when preparing its NRA.
- 5.9.5 The Scottish Ministers draw attention to the representation from the MCA regarding Search and Rescue (“SAR”), Emergency Response Co-operation Plans, levels of radar surveillance, AIS, and shore-based Very High Frequency radio coverage. The Scottish Ministers advise that the MCA representation must be fully addressed in the EIA Report and that the Developer must complete a SAR checklist in consultation with the MCA.
- 5.9.6 With regards to cabling routes and cable burial, the Scottish Ministers advise that a Burial Protection Index should be completed and, subject to the traffic volumes, an anchor penetration study may be necessary. The Scottish Ministers advise that this should be fully addressed in the EIA Report and highlight the MCA advice on a maximum 5% reduction in surrounding depth referenced to Chart Datum if cable protection measures are required. Additionally, the Developer must also fully address the SFF representation regarding cable burial and protection in the EIA Report.

## **5.10 Aviation and Radar**

- 5.10.1 The Scottish Ministers are broadly content with the study area identified in Section 15.2 of the Scoping Report.
- 5.10.2 The Scottish Ministers note, in line with the HIAL representation, that the Array Area lies within the Instrument Flight Procedure (“IPF”) safeguarding criteria of Kirkwall Airport and appears to be on the periphery of the IPF safeguarding criteria for Wick Airport. The Scottish Ministers advise the Developer to consider the IPF safeguarding criteria as the key components, particularly turbine locations, are refined through the EIA process.
- 5.10.3 The Scottish Ministers acknowledge Section 15.11.6 within the Scoping Report which identifies the potential impacts on military low flying activities and advises that these must be fully considered in the EIA Report. This is supported by MOD. The Scottish Ministers acknowledge that in Section

15.11.6 of the Scoping Report the Developer identifies the necessity for aviation safety lighting to be fitted to WTGs. The Scottish Ministers highlight the MOD representation that notes such lighting must fit the MOD's lighting requirements.

5.10.4 The Scottish Ministers note that the extent of MOD Practice and Exercise Areas have been accurately identified in Section 17.3.23 of the Scoping Report as danger Area D809 North and D809 Central. The Scottish Ministers advise that potential effects from vessels that will be present in the Danger Area complex during the construction and decommissioning phases of the Proposed Development must be fully considered in the EIA Report. Additionally, the potential impacts of vessels that need to occupy the Danger Area complex to undertake any maintenance of the Proposed Development should be considered. The Scottish Ministers advise the Developer to engage with MOD to fully address the concerns on potential impacts upon Danger Areas D809 North and D809 Central.

### **5.11 Infrastructure and Other Users**

5.11.1 The Scottish Ministers are content with the study areas, both the local infrastructure and other users and the regional infrastructure and other users, as defined in Section 16.2 of the Scoping Report.

5.11.2 The Scottish Ministers acknowledge the datasets and materials noted in Table 16.1 of the Scoping Report and consider the baseline data gathered for the assessment appropriate.

5.11.3 The Scottish Ministers acknowledge Table 16.3 within the Scoping Report which proposes the impacts to be scoped into the assessment for infrastructure and other users. The Scottish Ministers are content with what is proposed and provide no further comment. Additionally, the Scottish Ministers acknowledge Table 16.4 within the Scoping Report which proposed the impacts to be scoped out of the assessment for infrastructure and other users. Again, the Scottish Ministers are content with what is proposed and provide no further comment.

5.11.4 The Scottish Ministers acknowledge Section 16.9.1 of the Scoping Report which notes the potential for cumulative effects arising from other projects or activities in the vicinity of the study areas. The Scottish Ministers agree with the approach to cumulative assessment and emphasise the importance of engaging with other marine users, including developers of ScotWind and INTOG projects, during all phases of the Proposed Development.

5.11.5 The Scottish Ministers agree that transboundary impacts can be scoped out from further consideration in the EIA Report.

## 5.12 Major Accidents and Disasters

- 5.12.1 The Scoping Report notes that all identified hazards will be assessed within respective technical topic chapters within the EIA Report, or will be managed via adherence to industry requirements, Risk Assessment Method Statements, and/or management plans. As such the Developer has proposed to scope out all potential hazards resulting from the Proposed Development as having the potential to result in major accidents and disasters.
- 5.12.2 The Scottish Ministers advise that the EIA Report must include a description and assessment of the likely significant effects deriving from the vulnerability of the Proposed Development to major accidents and disasters. The Scottish Ministers are content for this description to be included within relevant receptor chapters instead of a standalone chapter. The Developer should make use of appropriate guidance, including the recent Institute of Environmental Management and Assessment (“IEMA”) ‘Major Accidents and Disasters in EIA: A Primer,’<sup>5</sup> to better understand the likelihood of an occurrence and the Proposed Development susceptibility to potential major accidents and hazards. The description and assessment should consider the vulnerability of the Proposed Development to a potential accident or disaster and the Proposed Development’s potential to cause an accident or disaster.
- 5.12.3 The Scottish Ministers advise that existing sources of risk assessment or other relevant studies should be used to establish the baseline rather than collecting survey data and note the IEMA Primer provides further advice on this. This should include the review of the identified hazards from your baseline assessment, the level of risk attributed to the identified hazards and the relevant receptors to be considered.
- 5.12.4 The assessment must detail how significance has been defined and detail the inclusions and exclusions within the assessment. Any mitigation measures that will be employed to prevent, reduce, or control significant effects should be included in the EIA Report.

## 5.13 Socio-Economics, Tourism and Recreation

- 5.13.1 The Scottish Ministers are broadly content with the study areas as detailed in Section 18.2 of the Scoping Report, however in line with MD-SEDD advice received on 22 July 2024, advise that the assessment of socio-economic impacts would benefit from the inclusion of a shortlist of potential epicentres of impact. The Scottish Ministers highlight the representation by OIC that

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<sup>5</sup> IEMA – Institute of Environmental Management and Assessment  
[https://www.iema.net/media/brbdeibt/j27374\\_iema\\_major\\_accidents\\_disasters\\_final-1.pdf](https://www.iema.net/media/brbdeibt/j27374_iema_major_accidents_disasters_final-1.pdf)

Orkney ports be considered and assessed as a local socio-economic study area.

- 5.13.2 In line with the MD-SEDD advice received on 22 July 2024, the Scottish Ministers advise that a full Socio-Economic Impact Assessment (“SEIA”) be included with the EIA Report and should be transparent in its methodological choices for assessment of socioeconomic impacts. The Scottish Ministers draw attention to Annex 1 of the MD-SEDD advice received on 22 July 2024 which may be of assistance when developing the SEIA.
- 5.13.3 With regards to baseline data, the Scottish Ministers, in line with the MD-SEDD advice received on 22 July 2024, advise that the most up to date data sources must be used for all analysis. The Scottish Ministers direct the Developer to the additional data sources provided in the MD-SEDD advice received on 22 July 2024 and the OIC representation.
- 5.13.4 The Scottish Ministers are generally content with the impacts scoped in as per Table 18.4 of the Scoping Report, however, in line with MD-SEDD advice received on 22 July 2024, disagree with the scoping out of socio-cultural impacts during the decommissioning phase.
- 5.13.5 The Scottish Ministers are broadly content with the proposed assessment approach noted in Section 18.7 of the Scoping Report, however, recommend the Developer to include additional analysis regarding potential job creation in comparison to existing jobs in the study area, as outlined in the MD-SEDD advice received on 22 July 2024. In addition, the Scottish Ministers agree with the MD-SEDD advice received on 22 July 2024 that a detailed description of the methodology used to assess economic impacts must be included in the EIA Report, outlining the methodological approach taken and any key assumptions that underpin any estimates.
- 5.13.6 With regards to the embedded mitigation, as noted in Section 18.5 of the Scoping Report, the Scottish Ministers highlight the OIC representation with recommended mitigations omitted from this chapter. The Scottish Ministers advise the Developer to consider these additional measures as part of its EIA Report.

#### **5.14 Marine Archaeology**

- 5.14.1 The Scottish Ministers are content with the study areas defined for marine archaeology and the data sources listed in Table 19.1 of the Scoping Report.
- 5.14.2 The Scottish Ministers note that there are 14 known archaeological features in the marine archaeology study area, shown in Figure 19.1 of the Scoping Report, or within 2km of the study area. The Scottish Ministers acknowledge Section 19.5.8 within the Scoping Report which references the Protection of

Military Remains Act 1986 (amended)<sup>6</sup> and notes that this act may be relevant to some of the identified wrecks. As such, the Scottish Ministers, in line with the HES representation, advise that direct physical impacts to such features should be avoided, including where the wreckage is dispersed and where the asset is located in a narrow route corridor.

- 5.14.3 The Scottish Ministers acknowledge Section 19.8.2 within the Scoping Report which notes that an archaeological assessment of the site-specific geophysical data, combined with the desktop data from the entire marine archaeology study area will inform a detailed marine archaeology baseline and will be presented in a technical report. The Scottish Ministers are content with this proposal; however, in line with the HES representation, advise that any such work should be undertaken in a manner that facilitates its archaeological analysis and use. The Scottish Ministers agree with the methodology proposed for the technical report; however, in line with the OIC representation, advise the Developer to consult with the Island's Archaeologist on the criteria for levels of the importance/significance of identified assets, and the criteria for evaluating the levels of impacts.
- 5.14.4 The Scottish Ministers acknowledge Table 19.4 within the Scoping Report which notes the impacts to be scoped into the Proposed Development assessment for marine archaeology. The Scottish Ministers, in line with the HES representation, are content that the potential impacts have been identified adequately. The Scottish Ministers, in line with the OIC representation, agree with the Developer that no potential impacts, as identified in in Table 19.4 of the Scoping Report, are to be scoped out of the assessment within the EIA Report.
- 5.14.5 The Scottish Ministers, in line with the HES and OIC representations, are content with the embedded mitigation proposed in Section 19.6.1 of the Scoping Report. The Scottish Ministers, in line with Section 2.4.12 of this Scoping Opinion, remind the Developer that adherence to post-consent plans, such as the development of a Written Scheme of Investigation and a Protocol for Archaeological Discoveries does not strictly constitute mitigation, rather it is the measures contained within the plan that will mitigate impacts. Nevertheless, the Scottish Ministers, in line with the HES and OIC representation, support the production of a marine archaeology technical report that will contain information to avoid archaeological seabed features and will create appropriately sized archaeological exclusion zones around marine archaeological assets.

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<sup>6</sup> Protection of Military Remains Act 1986 <https://www.legislation.gov.uk/ukpga/1986/35>

- 5.14.6 The Scottish Ministers, in line with the OIC representation, agree that there is no potential for transboundary impacts upon marine archaeology, and as such can be scoped out from further consideration within the EIA Report.

### **5.15 Seascape, Landscape and Visual Impact**

- 5.15.1 The Scottish Ministers broadly agree with the study area for seascape and landscape visual impact outlined in Section 20.2 of the Scoping Report.
- 5.15.2 The Scottish Ministers recommend including an additional viewpoint within the Hoy and West Mainland National Scenic Area to those already identified in Table 20.2 of the Scoping Report. This is supported by NatureScot and OIC.

### **5.16 Cultural Heritage**

- 5.16.1 The Scottish Ministers are content with the study area noted in Section 21.2.2 of the Scoping Report. The Scottish Ministers acknowledge Section 21.2.4 of the Scoping Report which notes that only assets where it is considered there is potential for a significant effect will be considered in the cultural heritage impact assessment rather than undertaking an, all-encompassing assessment. The Scottish Ministers, in line with the OIC representation, agree with this approach.
- 5.16.2 The Scottish Ministers acknowledge Table 21.4 within the Scoping Report which notes the impacts to be scoped into the proposed assessment for cultural heritage. The Scottish Ministers, in line with the HES and OIC representations, are content that the potential impacts have been identified adequately.
- 5.16.3 The Scottish Ministers highlight the OIC representation regarding the omission of designated sites in Stronsay or Auskerry within Table 21.3 of the Scoping Report. The Scottish Ministers advise the Developer to consider the OIC representation in full when conducting its cultural heritage impact assessment.
- 5.16.4 The Scottish Ministers, in line with the OIC representation, agree that there is no potential for transboundary impacts upon cultural heritage, and as such can be scoped out from further consideration within the EIA Report.

### **5.17 Climate Change**

- 5.17.1 The Scottish Ministers are broadly content with the Developer's approach in assessing climate change in Section 22 of the Scoping Report and note that the IEMA Environmental Impact Assessment Guide "Assessing Greenhouse

Gas Emissions And Evaluating Their Significance”<sup>7</sup>, referenced within the Scoping Report provides further insight in these matters.

- 5.17.2 The Scottish Ministers have considered this together with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019<sup>8</sup> and the requirement of the EIA Regulations to assess the significant effects from the Proposed Development on climate. The Scottish Ministers therefore advise that the EIA Report must include a Green House Gas Assessment which should be based on a Life Cycle Assessment approach, as noted within the Scoping Report. This assessment should include the pre-construction stage as well as the construction, operation, and decommissioning phases of the Proposed Development, including consideration of the supply chain as well as benefits beyond the life cycle of the Proposed Development.
- 5.17.3 The Scottish Ministers refer to Section 5.4.3 within this Scoping Opinion to highlight its advice that consideration should be given to impacts on blue carbon as a result of the Proposed Development, as well as an expanded assessment for benthic ecology to focus on the potential impacts of marine sediments and coastal habitats.

#### **5.18 Offshore Water Quality and Water Framework Directive**

- 5.18.1 The Scottish Ministers acknowledge Table 25.1 within the Scoping Report which provides an overview of technical topics scoped in and scoped out of further assessment within the EIA Report. The Scottish Ministers advise the Developer to engage with the regulator SEPA with regard to the assessment for the Water Framework Directive compliance. The Scottish Ministers provide no further comments.

#### **5.19 Other Environmental Topics**

- 5.19.1 The Scottish Ministers acknowledge Section 24.2 of the Scoping Report which notes topics that are proposed to be scoped out of further consideration in the EIA Report as they will be considered within relevant receptor chapters. The Scottish Ministers are content with what is proposed and provide no further comment.
- 5.19.2 With regards to offshore airborne noise and vibration, and as noted in Section 5.6.7 of this Scoping Opinion, the Scottish Ministers recommend the SMWWC

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<sup>7</sup> IEMA – Institute of Environmental Management and Assessment - <https://www.iema.net/resources/blogs/2022/02/28/iema-launch-of-the-updated-eia-guidance-on-assessing-ghg-emissions-february-2022/>

<sup>8</sup> Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 <https://www.legislation.gov.uk/asp/2019/15>



is used to minimise disturbance to marine mammals from noise from piling and auxiliary construction activities. This is supported by NatureScot.

- 5.19.3 The Scottish Ministers acknowledge the Developer's proposal to scope out offshore air quality for the offshore elements of the Proposed Development from further assessment in the EIA Report. The Scottish Ministers are content with what is proposed and provide no further comments.

## **6. Application and EIA Report**

### **6.1 General**

- 6.1.1 The EIA Report must be in accordance with the EIA Regulations and the Scottish Ministers draw your attention in particular to, regulation 6 of the 2017 MW Regulations, regulation 5 of the 2017 EW Regulations and regulation 12 of the 2007 MW Regulations. In accordance with the EIA Regulations, the Scottish Ministers advise that the EIA Report must be based on this Scoping Opinion.
- 6.1.2 The Scottish Ministers note the need to carry out an assessment under the The Conservation (Natural Habitats, &c.) Regulations 1994. This assessment must be coordinated with the EIA in accordance with the EIA Regulations.
- 6.1.3 A gap analysis template is attached at Appendix II to record the environmental concerns identified during the scoping process. This template should be completed and used to inform the preparation of the EIA Report. As part of the submission of the EIA Report the Scottish Ministers advise that the Developer must provide confirmation of how this Scoping Opinion is reflected in the EIA Report.

## 7. Multi-Stage Consent and Regulatory Approval

### 7.1 Background

- 7.1.1 The EIA Regulations contain provisions regulating the assessment of environmental impacts. A multi-stage consent or regulatory approval process arises where an approval procedure comprises more than one stage; one stage involving a principal decision and one or more other stages involving implementing decision(s) within the parameters set by the principal decision. While the effects which works may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision, if those effects are not identified or identifiable at the time of the principal decision, assessment must be undertaken at the subsequent stage.
- 7.1.2 The definition in the 2017 EW Regulations is as follows (the definition in the 2017 MW Regulations provides for the same but in relation to “regulatory approvals”): *“application for multi-stage consent” means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun*”.
- 7.1.3 A section 36 consent or marine licences, if granted, by the Scottish Ministers for the Proposed Development, may have several conditions attached requiring approvals etc. which fall under this definition, for example the approval of a CMS. When making an application for multi-stage consent or regulatory approval the Developer must satisfy the Scottish Ministers that no significant effects have been identified in addition to those already assessed in the EIA Report.
- 7.1.4 If during the consideration of information provided in support of an application for multi-stage consent or regulatory approval the Scottish Ministers consider that the Proposed Development may have significant environmental effects which have not previously been identified in the EIA Report (perhaps due to revised construction methods or updated survey information), then information on such effects and their impacts will be required. This information will fall to be dealt with as additional information under the EIA Regulations, and procedures for consultation, public participation, public notice and decision notice of additional information will apply.

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2 October 2024

Authorised by the Scottish Ministers to sign in that behalf.

**Appendix I: Consultation Responses & Advice**

*Please refer to separate document provided alongside Scoping Opinion*

**Appendix II: Gap Analysis**

*Please refer to separate document issued alongside Scoping Opinion.*