

CHAPTER 4: LEGISLATION, REGULATION, POLICY AND GUIDANCE

INTRODUCTION

- 4.1. This chapter describes the legislative and regulatory context to the Seagreen Project, explaining the different consent applications required for construction, operation and decommissioning. The consents required are determined by the nature and location of the proposed works. This is explained with reference to the specific legislation that applies to development within STW (within 12NM) and within the Scottish Renewable Energy Zone (REZ) (12 – 200NM).
- 4.2. The installation of an electricity generating station in STW with a capacity of 1MW or more requires consent of the Scottish Ministers under section 36 of the Electricity Act 1989. This requirement extends to generating stations with a capacity of 50MW or more within the REZ (Renewable Energy Zone (The Renewable Energy Zone (Designation of Area) Order 2004). Section 36A of the 1989 Act enables a navigation extinguishment declaration to be made in relation to an associated Section 36 consent.
- 4.3. The Energy Act 2004 provides for the creation of safety zones in both STW and the REZ. The declaration of safety zones is dealt with by the DECC.
- 4.4. The UK and Scottish Governments have recently introduced a new regime for the licensing of marine development through the Marine and Coastal Access Act 2009 and Marine (Scotland) Act 2010 respectively. Under these Acts a licence must be obtained before certain works and operations can be undertaken in the marine environment. The Scottish Ministers are the licensing authority under both Acts. Marine licences have replaced the previous requirement for authorisations under the Coast Protection Act 1949 and the Food and Environment Protection Act 1985.
- 4.5. The Marine and Coastal Access Act 2009 and Marine (Scotland) Act 2010 have also introduced a new regime of marine planning. The planning policy framework against which the range of consent applications will require to be assessed is presented in this chapter, although consideration of compliance with relevant planning policies is provided within the separate Planning Statement (Seagreen, 2012a), which accompanies the Seagreen Project consent applications. The broader policy context relating to the need for the development, including energy, sustainability and climate change policies is set out in Chapter 2: The Need for the Project of this ES.
- 4.6. The majority of the offshore consent applications for the Seagreen Project which are required by the Applicants will be determined by the Scottish Ministers, acting through Marine Scotland, which is the Scottish Governmental body with responsibility for marine planning and licensing functions. The only exceptions to this are consents for the creation of safety zones and approval of a decommissioning plan, both of which will be dealt with by DECC in consultation with Scottish Ministers.
- 4.7. The Seagreen Project requires onshore grid connection infrastructure to be installed from landfall at Carnoustie to Tealing substation. These works will be the subject of a separate ES and application to Angus Council for planning permission under the Town and Country Planning (Scotland) Act 1997 (as amended) and will be assessed separately as part of that process. Some further details on the consenting process for the Onshore Phase 1 Transmission Project and the relationship to the consenting process for the offshore Seagreen Project are given in later sub-sections of this chapter.

- 4.8. All figures referred to in this chapter can be found in Volume II: Figures of this ES. All appendices referred to in this chapter can be found in Volume III: Appendices of this ES.

DEVELOPMENT CONSENTS

Section 36 Consent

- 4.9. The installation of any offshore generating station with a capacity of 1MW or above requires consent under Section 36 of the Electricity Act 1989. Project Alpha and Project Bravo as separate offshore generating stations with generating capacities of up to 525MW. Both projects are located within the REZ, where offshore generating stations of greater than 50MW require consents under Section 36 of the Electricity Act 1989.
- 4.10. Accordingly, two separate applications under Section 36 of the Electricity Act 1989 will be made, one to permit the construction and operation of Project Alpha and another to permit the construction and operation of Project Bravo. The elements of the Seagreen Project for which Section 36 consent is sought comprise the following for each offshore generating station (Project Alpha and Project Bravo):
- WTGs and supporting tower structures, with associated access arrangements;
 - WTG foundations and substructures; and
 - subsea array cables linking the WTGs to the OSPs.
- 4.11. A detailed description of the components of Project Alpha and of Project Bravo is provided in Chapter 5: Project Description of this ES.
- 4.12. In formulating a Section 36 application, applicants have a statutory duty under Schedule 9 of the Electricity Act 1989 to have regard to certain considerations. These include the desirability of preserving the natural beauty (of the countryside), of conserving flora, fauna and geological or physiographical features of special interest and in protecting sites, buildings and objects of architectural, historic or archaeological interest. Applicants are required to do what they reasonably can to mitigate any effects which the proposal would have on these matters. There is also a requirement under Schedule 9 to avoid, so far as possible, causing injury to fisheries or to the stock of fish in any UK waters.
- 4.13. In considering Section 36 applications Scottish Ministers are required to have regard to these considerations and to the extent to which the applicant has complied with their duty to mitigate any effects using reasonable means.
- 4.14. Where a consent is granted in relation to construction and operation of an offshore generating station under Section 36 of the Electricity Act, a declaration under Section 36A for extinguishment of rights of navigation may be made at the same time. Scottish Ministers may not grant Section 36 consent where the generating station, whether in the territorial seas or the REZ, would interfere with recognised sea lanes essential to international navigation. In deciding whether navigation will be obstructed, the Scottish Ministers must take into account, how they intend to exercise their powers in relation to any application for a declaration to extinguish public rights of navigation and any application for a safety zone. Consideration of the impact of the Seagreen Project on navigation is provided in Chapter 15: Shipping and Navigation of the ES and is supplemented by the detailed Navigational Risk Assessment (NRA), a copy of which is provided in full in Appendix J of Volume III: Appendices of this ES.

Marine Licence

- 4.15. The Marine (Scotland) Act 2010 and Marine and Coastal Access Act 2009 both confirm that a Marine Licence is required to construct, alter or improve any works or deposit any object in or over the sea, or on or under the seabed. The Marine Licence requirements under the Marine (Scotland) Act 2010 apply in STW (0 - 12NM offshore) and the Marine Licence requirements under the Marine and Coastal Access Act 2009 apply in the REZ (12 - 200NM offshore). All of the works forming part of the offshore generating stations, together with necessary scour protection and cable protection, the meteorological masts and wave buoys, which are located within the REZ, therefore require Marine Licence applications under the Marine and Coastal Access Act 2009. It is important to note, that under devolved authority from the UK Government, the responsibility for administering licence applications under the Marine and Coastal Access Act 2009 lies with Scottish Ministers acting through Marine Scotland.
- 4.16. The OFTO assets, referred to in this ES as the Transmission Asset Project, which comprise the OSPs (which may include an offshore convertor station as well as offshore collector stations), together with the HV export cables between the OSPs and the part of the HV export cable within offshore waters, also require a separate Marine Licence application under the Marine and Coastal Access Act 2009. The remainder of the HV export cable within STW requires consent under the Marine (Scotland) Act 2010.
- 4.17. As the OFTO assets serve both the offshore generating stations a single Marine Licence application under each of the Acts is applicable. The OFTO assets will ultimately be owned and operated by a separate entity under the offshore transmission regime and the OFTO will be appointed through tender, post construction of the Transmission Asset Project.
- 4.18. An illustration of the likely components of the Seagreen Project is given in Figure 4.1.
- 4.19. Special procedures for applications relating to certain electricity works provide that where Marine Licences and related applications for a generating consent under Section 36 are required these can be considered together. Marine Scotland has confirmed in its letter dated 20 April 2012 that the Section 36 applications and the Marine Licence applications will be considered together in accordance with these provisions in this case.
- 4.20. Marine Scotland have a target timescale of 9-months for determination of the consent applications, on receipt of a complete application. A planning processing agreement between Marine Scotland and Seagreen sets out key stages in the application process from pre-application through to post-decision along with the relevant timescales associated with each key stage. This ES represents one of the key supporting documents forming part of the consent applications. In addition to the ES a number of other supporting documents will be submitted as agreed with Marine Scotland including:
- a Planning Statement (Seagreen, 2012a);
 - a Consultation Report (Seagreen, 2012b); and
 - the Proposed Approach to Habitats Regulations Appraisal (HRA) Report (Seagreen, 2012c) (contained in Appendix D3 in Volume III of this ES).
- 4.21. The consideration of the Section 36 applications and Marine Licence applications for the development by the Scottish Ministers, will involve balancing a wide range of considerations. In considering Marine Licence applications the Scottish Ministers must have regard to a number of statutory provisions within the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009. These matters are set out below, firstly with regard to the Marine and Coastal Access Act 2009, which provides the statutory basis for consenting of the majority of the offshore infrastructure and secondly with regard to the Marine (Scotland) Act 2010.

4.22. Table 4.1 below summarises the Applicants (SAWEL and SBWEL) proposed arrangements for consents, for the development of the Seagreen Project.

Table 4.1 Seagreen Project Consent Applications

Project Element	Applicant	Consent Required	Consenting Authority
Offshore Wind Farm Assets			
Project Alpha (including marine licence for scour protection and cable protection (if required); meteorological masts and wave buoys)	SAWEL	Section 36 under Electricity Act 1989	Scottish Ministers supported by Marine Scotland
		Marine Licence under the Marine and Coastal Access Act 2009	Scottish Ministers supported by Marine Scotland
		Declaration under Section 36A of the Electricity Act 1989	Scottish Ministers supported by Marine Scotland
		Safety zone under Section 95 of the Energy Act 2004	DECC
		Decommissioning Plan under Section 105 of the Energy Act 2004	DECC
Project Bravo (including marine licence for scour protection and cable protection (if required); meteorological masts and wave buoys)	SBWEL	Section 36 under Electricity Act 1989	Scottish Ministers supported by Marine Scotland
		Marine Licence under the Marine and Coastal Access Act 2009	Scottish Ministers supported by Marine Scotland
		Declaration under Section 36A of the Electricity Act 1989	Scottish Ministers supported by Marine Scotland
		Safety zone under Section 95 of the Energy Act 2004	DECC
		Decommissioning Plan under Section 105 of the Energy Act 2004	DECC
Transmission Asset Project			
OFTO Assets (in and out with 12NM)	SAWEL and SBWEL jointly	Marine Licences under the Marine and Coastal Access Act 2009 and Marine Scotland Act 2010	Scottish Ministers supported by Marine Scotland
		Declaration under Section 36A of the Electricity Act 1989	Scottish Ministers supported by Marine Scotland
		Safety zone under Section 95 of the Energy Act 2004	DECC
		Decommissioning Plan under Marine Licence	Scottish Ministers supported by Marine Scotland

MARINE LICENSING AND PLANNING LEGISLATION SEAGREEN

Marine Licensing

- 4.23. Section 2 of the Marine and Coastal Access Act 2009 contains a requirement that the functions of a Marine Management Organisation (MMO) (which for STW and the REZ are the Scottish Ministers) are carried out to ensure that any activities are managed, regulated or controlled with the objective of making a contribution to the achievement of sustainable development.
- 4.24. Section 69 requires that the appropriate licensing authority (the Scottish Ministers for the Scottish offshore waters) must have regard to the following matters in determining applications for Marine Licences:
- the need to protect the environment;
 - the need to protect human health;
 - the need to prevent interference with legitimate uses of the sea; and
 - such other matters as the Scottish Ministers consider relevant.
- 4.25. Equivalent provisions for licensing within STW are contained in sections 2, 3 and 27 of the Marine (Scotland) Act.
- 4.26. Although covered by different statutory provisions, it is expected that the Scottish Ministers will assess the Seagreen Project as a whole against these criteria.
- 4.27. In addition to the specific matters detailed in legislation, the Scottish Ministers have identified other matters which they consider to be relevant within their formal response to the Seagreen Project Scoping Report (Marine Scotland Scoping Opinion, November 2010). A copy of the Scoping Report and the scoping opinion can be found in Appendix B of Volume III: Appendices of this ES.

Marine Planning

- 4.28. The Marine and Coastal Access Act 2009 and Marine (Scotland) Act 2010 have introduced a new system of marine planning that covers both the REZ and STW.
- 4.29. Both Acts require authorisation decisions to be made in accordance with the appropriate marine plans (as defined) unless relevant considerations indicate otherwise.
- 4.30. The only marine plan document currently in force is the UK wide Marine Policy Statement (MPS), which was adopted in March 2011 by both the UK and Scottish Governments. The MPS notes that until spatial marine plans are in place, decisions must be made in accordance with that document (MPS paragraph 2.3.2.1).
- 4.31. The Scottish Ministers are under a duty to prepare and adopt a National Marine Plan (NMP) and the current status of preparation of the NMP is considered further below.

MARINE PLANNING AND LAND USE PLANNING

Town and Country Planning (Scotland) Act 1997 (as amended)

- 4.32. Landward of MLWS, all works require to be consented under the Town and Country Planning (Scotland) Act 1997 (as amended). All of the onshore works forming part of the

Onshore Phase 1 Transmission Project are subject of a separate application which will be submitted to Angus Council, as the relevant Planning Authority, under the Town and Country Planning (Scotland) Act 1997 (as amended). The impacts of the onshore cable route and all aspects of the project above MLWS including shore crossings, transition pit, road, rail and watercourse crossings, and substation and/ or converter station construction and operation elements, will be fully considered within the ES that will be submitted with the planning application to Angus Council.

- 4.33. Although the legislative context, consenting process and determining authority for the onshore and offshore projects are different, there is a physical overlap between the land use and marine planning systems in the coastal area between MHWS and MLWS. All works within the intertidal area will therefore be consented under both the Town and Country Planning (Scotland) Act 1997 (as amended) and the Marine (Scotland) Act 2010 by the respective consenting authorities. The works within the intertidal zone will comprise of the installation of the export cables, using horizontal directional drilling (HDD), to install ducts from the transition pit location under the existing sea defences and out to the MLWS tidal limit, with a transition pit located above MHWS.
- 4.34. Marine Scotland provided advice on the proposed range of consents which would be required for the Seagreen Project in a letter to Seagreen dated 20 April 2012. In this letter Marine Scotland confirmed that *"Separate planning will need to be sought with relevant local authority, through the Town and County Planning Act 1990 for all works above mean low water spring (MLWS). Upon application Marine Scotland, in discussion with local authority, will set boundaries and one or the other shall deal with the area between MLWS and MHWS"*.
- 4.35. This overlap provides integration between the land use and marine planning systems, although Development Plan Policies are directly applicable only to that section of the onshore export cables which extend landward of MLWS. The Development Plan for the Angus Council Area comprises of the TAYplan Strategic Development Plan 2012-2032 (TAYplan, 2012) which was approved in June 2012 and the Angus Council Local Plan Review which was adopted in February 2009 (Angus Council, 2009).
- 4.36. Interaction between the land use and marine planning systems is also apparent within the content of both the National Planning Framework and Scottish Planning Policy (SPP) which sit at the top of the land use planning policy hierarchy. These national planning policy documents are referred to below as part of the policy framework applicable to the development and are considered in more detail within the Planning Statement that accompanies the consent applications.

National Planning Policy and Guidance

National Marine Plan (NMP)

- 4.37. At a national level the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010 provide for the creation of Scotland's first NMP and a pre-consultation draft, setting out the national strategic objectives for the Scottish marine area in future years, was published for consultation in March 2011 (Scottish Government, 2011). The NMP area will cover both STW (out to 12NM) and offshore waters (12 – 200NM). The NMP is intended to sit alongside and interact with the Marine Policy Statement and existing land use planning regime to provide a strategic framework for decision making in the marine environment that is consistent with the strategic priorities set out in national planning policy documents.
- 4.38. Marine planning is still at an early phase of development in Scotland and the pre-consultation draft version of the NMP currently does not represent a material consideration

in the determination of the Seagreen Project consent applications. Further consultation of the draft NMP is scheduled to take place in summer 2012 and it is anticipated that the NMP will be progressed during late 2012 and will ultimately become a key part of the framework against which the consent applications will be assessed. As such, due consideration will be given to the emerging plan during the determination process.

UK Marine Policy Statement

- 4.39. Under the Marine and Coastal Access Act 2009, a UK Marine Policy Statement was jointly adopted by the Scottish Ministers, the Secretary of State, Welsh Ministers and the Department of the Environment Northern Ireland in March 2011 (UK Government, 2011a). The important role that marine planning will play in facilitating climate change mitigation through actions including offshore renewables is recognised in the Marine Policy Statement. It states that a significant part of the renewable energy required to meet climate change targets and objectives will come from marine sources with offshore wind expected to provide the largest single renewable electricity contribution leading up to the 2020 renewables targets and beyond.
- 4.40. All public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area must do so in accordance with the relevant marine policy documents unless relevant considerations indicate otherwise. The Marine Policy Statement provides the framework for the development of Marine Plans across the UK which is intended to provide more detailed policy and spatial guidance at the National or Regional level. This means that decisions on activities in the UK marine area will be planned once Marine Plans are in place. In the interim, decisions must be made in accordance with the Marine Policy Statement. In the absence of a formally adopted NMP and the pre-consultative stage of the plan process the UK Marine Policy Statement is the key marine planning policy document for the consideration of the Seagreen Project consent applications.
- 4.41. The key social, economic and environmental considerations that marine plan authorities and decision makers should take into account, are set out in chapter 2 of the Marine Policy Statement, while chapter 3 sets out the policy objectives for the key activities that take place in the marine environment, together with providing guidance on the consideration of the potential impacts arising from these activities.
- 4.42. In examining and determining applications for all energy infrastructure, the Marine Policy Statement confirms that the following matters must be taken into account:
- the national level of need for energy infrastructure;
 - the positive wider environmental, societal and economic benefits of low carbon electricity generation;
 - that the renewable energy resources can only be exploited where the resource exists and where economically feasible; and
 - the potential for inward investment on energy related manufacturing and deployment activity and employment opportunities and regeneration of local and national economies, supporting the objective of developing the UK's low carbon manufacturing capability.
- 4.43. The Seagreen Projects compliance with the above matters and other relevant matters are considered in detail within the Planning Statement submitted in support of the consent applications. As well as positive environmental benefits through reducing greenhouse gas emissions from energy production, the main potential adverse impacts that may arise from

renewable energy developments are also outlined in the Marine Policy Statement. It confirms that potential adverse impacts, together with potential mitigation measures, are considered in the National Policy Statement for Renewable Energy Infrastructure (EN-3)⁸⁴ (DECC, 2011a). This National Policy Statement is specific to England and Wales, however, the Marine Policy Statement accordingly confirms that in Scotland reference should be made to National Planning Framework 2 (NPF2) (Scottish Government, 2009).

- 4.44. The Marine Policy Statement confirms that the same approach should be applied by the ‘decision maker’, regardless of whether a NMP is in place. The approach adopted by the decision maker should evaluate the potential benefits and adverse effects of each proposal, drawing on different identifiable lines of evidence, to consider the different impacts of a proposal. When considering potential benefits and adverse effects, decision makers should also take into account any cumulative impacts of the proposals with other projects and activities. It also confirms that the level of assessment undertaken for any project should be proportionate to the scale and potential impact of the project, as well as the sensitivity of the environment concerned and in accordance with the Environmental Impact Assessment (EIA) Directive (Directive 85/ 337/ EEC), where applicable. It further notes that an Appropriate Assessment (AA) in accordance with the Habitats Directive (Directive 92/ 43/ EEC) may also be required, in accordance with relevant national legislation and Government circulars or guidance.

National Planning Framework for Scotland

- 4.45. Scottish Ministers are responsible for the National Planning Framework for Scotland which is the long term strategy for the development in Scotland over the next 20 years. The current National Planning Framework, NPF2 (Scottish Government, 2009), identifies investment in energy infrastructure as a strategic priority for taking forward the spatial aspects of the Scottish Government’s policy commitments on sustainable economic growth and climate change.
- 4.46. One of the key aims of the development strategy is to contribute to the achievement of climate change targets and to establish Scotland as a leading location for the development of renewable energy technology, including offshore wind. The Marine Policy Statement confirms that the national level of need for energy infrastructure set out in NPF2 in Scotland must be taken into account in both the development of Marine Plans and in determining applications for energy infrastructure.
- 4.47. The spatial dimension to development of energy infrastructure is recognised by reference within NPF2, to the Firths of Tay and Forth area, as a location with potential for the development of OWFs. The Firth of Forth R3 Zone 2, within which Project Alpha and Project Bravo sites are located, is the largest area off the Scottish coast licensed by The Crown Estate for development of OWFs, with the greatest potential to contribute to renewable energy generation at a strategic level.

Scottish Planning Policy (SPP)

- 4.48. The National Planning Framework is supported by the SPP (Scottish Government, 2010), which is a statement of government policy on nationally important land use planning matters. The consolidated SPP sets out Scottish Government policy on a series of topics, including renewable energy. With regard to offshore renewable energy generation, paragraph 192 of the SPP confirms that “*Off-shore renewable energy generation presents significant opportunities to contribute to the achievement of Government targets. Although the planning system does not regulate offshore development, it is essential that development plans take into account the infrastructure and grid connection needs of the off-shore renewable energy generation industry*”.

- 4.49. The above policy statement within the SPP confirms the integrated approach to development which is implemented through the land use and marine planning systems to enable the realisation of the opportunity provided by offshore renewable development, to meet national targets for energy generation from renewables.
- 4.50. The Scottish Government also provides advice on a range of subjects through a series of Planning Advice Notes (PANs). A number of these PANs were identified by Marine Scotland in the response to the Seagreen Project Scoping Report as being of relevance and have therefore also been considered as part of the overall policy context for the assessment of the Seagreen Project within this ES.
- 4.51. An appraisal of the Seagreen Project against all of the relevant statutory planning provisions within the legislation and associated planning policy documents referred to previously, is provided in a separate Planning Statement which accompanies the Seagreen Project consent applications.

EIA Legislative Framework

- 4.52. The EC EIA Directive (85/ 337/ EEC as amended by 97/ 11/ EC, 2003/ 35/ EC and 2009/ 31/ EC and codified by 2011/ 92/ EU) requires that an EIA must be carried out in support of an application for development consent for certain types of major projects which are likely to have the potential to give rise to significant environmental effects.
- 4.53. Under the EIA Directive, an EIA is required for all projects listed under Annex I; Annex II projects may require an EIA depending on a number of factors. OWF developments are listed under Annex II as “*installations for the harnessing of wind power for energy production (wind farms)*”.
- 4.54. Annex II projects require an EIA to be undertaken where the project is “*likely to have significant effects on the environment by virtue of factors including their nature, size or location*”.
- 4.55. The EIA Directive has been transposed into Scottish law through a number of different regulations. In relation to the Seagreen Project, the EIA Directive is applied through the following regulations:
- The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000, as amended by The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008 (where applicable); and
 - The Marine Works (Environmental Impact Assessment) Regulations 2007, as amended by the Marine Works (Environmental Impact Assessment) Regulations 2011 (where applicable).
- 4.56. This EIA has been carried out in accordance with both of the above regulations, collectively referred to in this ES as the ‘EIA Regulations’.

Other Consents

Habitats and Birds Directives and Regulations

- 4.57. In 1992 the EC adopted Council Directive 92/ 43/ EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive). The provisions of the Habitats Directive required EC Member States to introduce a range of measures including the protection of habitats and species listed in Annexes I and II of the Directive. Council Directive 2009/ 147/ EC on the conservation of wild birds fulfils a parallel role for bird species.

- 4.58. The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (The Offshore Marine Regulations), transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) into national law within the Scottish REZ (12 - 200NM).
- 4.59. The Conservation of Habitats and Species Regulations 2010 and the Conservation (Natural Habitats, &c.) Regulations 1994 form the legal basis for the implementation of the Habitats and Birds Directives in terrestrial areas Scotland within territorial waters out to 12NM. The 2010 Regulations consolidate various amendments to the 1994 Regulations and apply in Scotland to, among other things, Section 36 applications.
- 4.60. Under these Habitat Regulations a network of protected sites for birds (Special Protection Areas (SPAs)) and certain habitats and species (Special Areas of Conservation (SACs)) have been established in the UK. The network of sites are collectively known as the Natura 2000 network of sites.
- 4.61. Where a project is likely to have a significant effect on a Natura 2000 site, there is a requirement for the competent authority (Marine Scotland) to carry out an AA. The Regulations state that it is the developer's responsibility to provide sufficient information to the competent authority to enable them to assess whether there are likely to be any significant effects and to enable them to carry out the AA, where necessary as part of a HRA. A stand alone Preliminary HRA Report is to be submitted to Marine Scotland following submission of this ES and a further HRA Report will be submitted to Marine Scotland by the Applicants to assist Marine Scotland in their role as the competent authority in undertaking the AA. The approach to submitting information to inform the AA is presented in Appendix D3 of ES Volume III.

European Protected Species (EPS) Licence

- 4.62. The Habitats Directives list certain species of animals and plants on Annex IV (a) and (b) respectively, that require strict protection. Those Annex IV species occurring naturally in Britain are defined as 'European protected species' (EPS). The Offshore Marine Regulations implement the species protection requirements of the Habitats and Birds Directives in the Scottish REZ and make it an offence to kill, injure, capture or disturb marine EPS.
- 4.63. It is possible that a EPS licence may be required in relation to the proposed works if disturbance cannot be avoided. Certain tests must all be passed before a licence can be issued which vary according to the species concerned and, in addition, advice must be sought from Joint Nature Conservation Committee (JNCC) on whether a licence should be granted. This ES provides the information to enable the need for a EPS licence to be considered by Marine Scotland in consultation with JNCC and Scottish Natural Heritage (SNH). While the grant of such a licence is separate to the main Section 36 and Marine Licence application process, it is understood that this will be considered in parallel by Marine Scotland.

Energy Act 2004

Safety Zones

- 4.64. In addition to the range of consents set out above, certain additional consents are also required by the Energy Act 2004. Section 95 of the Energy Act 2004 introduced provisions to provide for the establishment of safety zones around Offshore Renewable Energy Installations (OREIs) to ensure the safety of the OWF infrastructure, individuals working thereon, construction vessels and other vessels navigating in the area whilst works take place.

- 4.65. Section 95(5) confirms that an area may be declared to be a safety zone only if it is an area of waters around or adjacent to a place where an OREI is to be, or is being, constructed, extended, operated or decommissioned; but may also extend to waters outside the waters subject to regulation under Section 95. In the case of OREIs safety zones, ‘rolling’ safety zones around OWF infrastructure and construction vessels, of 500 metres (m) can be applied for during construction and decommissioning. Safety zones of up to a maximum of 50m around OWF structures from their outer edge may also be established during operation.
- 4.66. Applications for safety zones require to be made to the DECC however, section 95(4) of the Energy Act 2004 and the Electricity (Offshore Generating Stations) (Safety Zones) (Applications Procedures and Control of Access) Regulations 2007 requires that the Scottish Ministers be consulted prior to issue of any notice establishing a safety zone in STW of the REZ.
- 4.67. It is proposed that ‘rolling’ safety zones around construction vessels will be applied for during construction in accordance with the definition of ‘construction’ provided at Section 104(1) Energy Act 2004 which includes the installation of electric lines. It is intended to make applications for the establishment of safety zones to DECC for the Transmission Asset Project as well as for Project Alpha and Project Bravo to cover the construction phase of the projects.
- 4.68. It is also intended to make applications for the establishment of operational safety zones for Project Alpha and Project Bravo to DECC once the final number and precise location of the OWF structures (including OSPs and meteorological masts) has been determined however the current anticipated need for safety zones for the Seagreen Project is set out in Chapter 5: Project Description and Chapter 15: Shipping and Navigation of the ES. The safety zone need is supplemented by the detailed NRA a copy which is provided in full in Appendix J of Volume III: Appendices of this ES.

Decommissioning Plan

- 4.69. The Energy Act 2004 also introduced a requirement to prepare a decommissioning programme for OWF to ensure the reinstatement of sites and ensure the availability of adequate funds to undertake decommissioning. These provisions were subsequently updated by the Energy Act 2008. Decommissioning plans require to be submitted to DECC however, Section 106(2) of the Energy Act 2004 requires that the Scottish Ministers be consulted prior to approval.
- 4.70. Under the statutory and licensing processes, Project Alpha and Project Bravo operators and the appointed OFTO will be required to prepare detailed decommissioning plans and set aside funds for the purposes of decommissioning in accordance with the Guidance Note for ‘Decommissioning Offshore Renewable Energy Installations under the Energy Act 2004’ (DECC, 2011b).
- 4.71. The decommissioning plan will consider the latest technological developments, legislation and environmental requirements at the time that the work is due to be carried out. For the purposes of the current consenting framework and as a basis for the Seagreen Project EIA, a high level decommissioning programme based on the current technological and regulatory framework is outlined in Chapter 5: Project Description of this ES.

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