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Moray Offshore Windfarm (East) Limited
C/O Shepherd And Wedderburn Llp
Condor House, St. Paul's Churchyard
London
EC4M 8AL

Our Ref: 011/OW/MORLE - 8

8 May 2019

Dear Redacted ,

ENERGY ACT 2004: OFFSHORE WIND ELECTRICITY GENERATING STATION

SAFETY ZONE APPLICATION – MORAY EAST OFFSHORE WINDFARM, MORAY FIRTH

1. The Application

1.1. I am directed by the Scottish Ministers to refer to the Safety Zone application submitted on 27 September 2018 (“the Application”) by Moray Offshore Windfarm (East) Limited (“the Applicant”) to the Scottish Ministers for a notice to be issued by the Scottish Ministers under section 95(2) of the Energy Act 2004 (“the Act”), declaring that the areas specified under the Application be safety zones for the purpose of securing the safety of the Moray East Offshore Windfarm (“MEOW”) and individuals and vessels in its vicinity during the period of construction, operation and maintenance.

1.2. The Applicant has requested the declaration, during the construction of the MEOW of “rolling” safety zones with a radius of 500 metres, within the meaning of that term in regulation 2 of the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007/1948 (“the 2007 Regulations”), around the location of each Wind Turbine Generator (“WTG”) and Offshore Substation Platform (“OSP”), and their substructures/foundations. In addition, the Applicant has also requested that safety zones of 50 metre radius should be put in place around each wind turbine generator (“WTG”) and OSP and their substructures/foundations whilst work is not ongoing (but before the operation of the wind farm commences). Finally, the Applicant also requests a 500 metre radius safety zone around all ‘major maintenance’ being undertaken on WTGs and OSPs and their substructures/foundations.

1.3. A Notice of Application (the “Public Notice”) was published and served by the Applicant in accordance with the requirements of the Energy Act 2004 and regulations 4 and 5 of the 2007 Regulations.

2. Representations

2.1. The Scottish Ministers note that a range of views concerning the safety zones were requested by the Applicant. While there was a general acceptance that safety zones of the dimensions and applications set out in the Application were reasonable measures to secure the safety of mariners and those people working on the WTGs, including their foundations/substructures, a number of consultees raised concerns about aspects of the requested safety zones. A summary of the views of individual consultees and the Applicant's response to the points raised is set out below:

- i. *The Cruising Association* offered no substantive comments on the Application.
- ii. *Invergordon Harbour Master* confirmed that the safety zone notice would be displayed on their notice boards and requested clarification that the use of safety zones would be promulgated through Notices to Mariners ("NtMs").

Applicant's response – the Applicant confirmed that assuming the safety zone application is successful, the use of the safety zones will be promulgated through NtMs.

Marine Scotland's response – MS-LOT is satisfied that the Applicant has fully addressed the points raised by Invergordon Harbour Master in response to the Application.

- iii. *The Maritime and Coastguard Agency ("MCA")* stated that they support the 500 metre safety zone around the individual renewable energy installations during construction, major maintenance or decommissioning (as indicated by large construction vessels such as jack ups etc.), and a rolling 50 metre safety zone around installations during the construction phase until commissioning.

However, the MCA believes that there is not sufficient evidence to support the establishment of a 500 metre safety zone when the Service Operation Vessel ("SOV") is present as there is a clear difference between the need for a safety zone where large vessels are conducting major works for a long period of time, and the use of the SOV. The MCA maintains that the use of the SOV should fit the internationally recognised law of the sea through maintaining safe distances and sufficient look out via visual observations, radio watches and radar. The MCA believes there is no real benefit, on the evidence given, for applying a 500 metre safety zone for the SOV on this occasion. Therefore, MCA concluded that SOVs should not trigger a 500 metre zone.

The MCA also noted that the Application states "around each wind farm or OfTI structure", which implies it could be around the whole area rather than the individual renewable energy installations.

Applicant's response – The Applicant responded that the request for safety zones around SOVs displaying Restricted in Ability to Manoeuvre ("RAM") status when the SOV is attached to or on the station¹ next to a structure is in line with 2007 Regulations

¹ On station means that a vessel is using its navigation and propulsion systems to hold position at a specific and precise geographical location. The SOV is an example of this whereby it will use its dynamic positioning systems (including thrusters and propellers) to manoeuvre and hold in position alongside a structure. This system is more advanced than a vessel using its anchors, noting that for the purpose of the Application the proposed SOV only has forward anchors,

part 1(2) which states that “major maintenance works” means works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such an installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel.

Marine Scotland’s Response – The 2007 Regulations state that any vessel attached or anchored to a structure could trigger a 500 metre safety zone. The Applicant varied its Application to comply fully with the 2007 Regulations. This variation ensured that SOVs in RAM status that are on a station next to the structure (wind turbine or offshore substation) would trigger a 500 metre zone. MS-LOT is satisfied that the varied application complied with the 2007 Regulations and therefore the point raised by MCA is now addressed.

- iv. *Nairn Harbour Master* offered no comments on the Application and agreed to display the safety zone notice on the public notice board.
- v. *The Northern Lighthouse Board (“NLB”)* stated that it had no objections to the Application and recommended that the Applicant should liaise with local marine stakeholders, the UK Hydrographic Office and the fishing industry to ensure the promulgation of information regarding the safety zones.
- vi. *Royal Yachting Association Scotland* agreed with the Application and offered no further comments.
- vii. *The Scottish Fishermen’s Federation (“SFF”)* objected to the proposals on the basis that until a number of issues are fully addressed, the development will not comply with Scotland’s National Marine Plan, especially General Policies 4 and 17 along with Sea Fishery Policies 1, 2 and 3.

The SFF highlights the need to guard any subsea structures which are not being worked on, noting that this can pose a hazard to fishers, and the need to communicate with the fishers operating in the area.

The SFF sought clarity on the issue of mechanical protection, including an explanation as to why and how all the cables are buried and protected. SFF also queried whether the particular needs of the barges are adequately catered for in terms of space and whether they will have electronic monitoring of their positions, as described in the Vessel Management Plan (“VMP”).

Applicant’s response – Referring to the application report, the Applicant notes that the safety zones are designed to manage potential interactions between third party vessels and the MEOW construction and maintenance activities, with a view to securing the safety of the assets and other installations, individuals and vessels in their vicinity. The Application is being made in line with the requirements under section 95 and schedule 16 of the 2004 Act and the 2007 Regulations respectively.

The Applicant states that, as noted within the Application report (specifically within sections 11.2, 11.3, 11.4, 11.6, 13.2 and 14), the site will be marked as a construction zone (through marker buoys as approved by NLB) and guard vessels will be placed in the area which will enable vessels approaching the MEOW site to be informed of the

meaning that it would not be able to manoeuvre itself into close proximity to the structure using the anchors given the effects of tide and weather (i.e. anchor swing).

risk of subsea structures which are not being worked on. In addition, construction details will be promulgated through NtMs, including the Kingfisher Fortnightly Bulletin, and the Applicant will continue to have regular contact with the fishing stakeholders through the Commercial Fisheries Working Group (“CFWG”) meetings, the company’s Fisheries Liaison Officer (“FLO”) and through a FLO on board construction vessels. Section 11.2 has been further updated to set out the approach to piles which do not pierce the surface of the water.

The Applicant notes that cable protection (including burial and requirement for mechanical protection) is addressed within the wind farm Cable Plan (for the inter-array and the OSP interconnector cables) and within the OfTI Cable Plan (for the export cables) both of which have been submitted to and approved by MS-LOT.

The Applicant states that the issue of vessel movement, including barges, has been discussed with the SFF and individual fishermen and will be addressed within the Commercial Fisheries Mitigation Strategy (“CFMS”). All construction vessels will have an Automatic Identification System and their locations will be monitored via the marine coordination centre.

Marine Scotland’s response – MS-LOT is satisfied that the Applicant has fully addressed the points raised by the SFF in response to this Application. In addition, MS-LOT has consulted with SFF on the plans mentioned in its response: the wind farm and OfTI Cable Plans and the VMP. SFF had direct input and their specific concerns have been addressed during those consultations. Plans have been updated to ensure that the interests and safety of the catching sector are taken into account by the Applicant. Therefore, MS-LOT is satisfied that these issues have been resolved.

- viii. *Scottish Natural Heritage* offered no comments on the Application.
- ix. *The UK Chamber of Shipping (“UKCoS”)* offered no comments on the Application and noted that the proposal is in accordance with Department for Energy and Climate Change guidance “Applying for safety zones around offshore renewable energy installations” (“DECC 2011 Guidance”), which UKCoS understands to be the most up to date guidance, and therefore UKCoS has no objections to the proposal and no additional comments to make.
- x. *Public representation* - A local skipper, voiced his concern over the loss of fishing ground due to operations associated with the MEOW , stating fishing areas and that he has been fishing in those areas for a number of years. The individual stated that they had been in communication with the survey vessel Kommandor Stuart over the past six months to try to allow the surveys to continue but that he was concerned for the future of his business and crew due to cumulative impacts with Beatrice Offshore Wind Farm.

Applicant’s response – The Applicant stated that it will continue to engage with the fishing industry through CFWG meetings, through the issue of NtMs (including the Kingfisher Fortnightly Bulletin) and engaging directly with fishermen potentially affected by the construction and maintenance activities. The Applicant also acknowledged the potential for interaction between construction activities and fishing activities and will continue to engage directly with the individual.

Marine Scotland's response – MS-LOT is satisfied that the Applicant has fully addressed the points raised by the member of the public in response to this Application.

- xi. *Fishing Industry Representative* - A member of the public, identified by the Applicant as a wider fishing industry representative, stated that the Application was acceptable so long as the 500 metre safety zone reverts to 50 metre when no maintenance work is being carried out.

3. The decision of the Scottish Ministers

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

- “Major maintenance works” are defined in the 2007 Regulations as “works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such as the installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel”;
- MEOW will be marked and lit in accordance with relevant requirements;
- As indicated in the Application, the Applicant has confirmed that there will be guard vessel(s) deployed during the construction of the project;
- The Applicant will issue regular NtMs and has also indicated it will promulgate relevant information about construction operations and safety zones through radio warnings and Kingfisher Fortnightly Bulletins (Such information should also be sent to appropriate contacts within the Scottish Government and Marine Scotland to keep them informed of progress). Throughout the construction, operation and maintenance phases, the development will be marked and charted as required by the NLB;
- Vessels engaged in the construction of the wind farm or its major maintenance will, in the first instance, warn any unauthorised vessels that look as if they might be on a trajectory which would take them into a safety zone, to alter their course;
- The Applicant has stated that where feasible, details and actions of any vessels which consistently ignore the warnings issued by the development and are considered to be causing a potential danger to vessels (including their own vessels), personnel or assets within the safety zone areas will be monitored and action (including steps taken) recorded. Any infringements of the safety zone or unsafe navigational acts (as required under the relevant regulations implementing international conventions) will be reported to the relevant authorities;
- Within areas declared to be a 500 metre safety zone or a 50 metre safety zone, the vessels permitted to enter and remain in the zone are vessels involved in activities related to construction and major maintenance works;
- As indicated above, the Applicant has stated that there would be a maximum of three safety zones of 500 metre radius around structures at any one time during construction; and

- Options for the prosecution of any incursions into the safety zone are deliberate and malicious, cause damage, nuisance or endanger lives will be considered on the basis of the particulars of the case.

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

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

4. The Declaration

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

During construction

- *A 500 metre radius around each WTG and OSP where construction works are taking place that include sensitive activities being undertaken by vessels (RAM). A maximum of three of such zones is permitted at any one time.*
- *A 50 metre radius around partially completed WTGs and OSPs where work is not underway and the risk assessments identify a need.*
- *A 50 metre radius around each completed WTG and OSP prior to commissioning and as required by a risk assessment process.*

During major maintenance

- *A 500 metre radius around all major maintenance works being undertaken around the WTGs and OSPs. No more than one major maintenance zone is permitted at any one time.*

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

4.3. For the purposes of this notice, the MEOW comprises the WTGs, OSPs, export cables, inter-array cables and interconnector cables for which consent was granted by the Scottish Ministers under section 36 of the Electricity Act 1989 on 19 March 2014, the subsequent variation application for which consent was granted by the Scottish Ministers on 22 March 2018 and as assigned on 8 June 2018 to the Applicant (Company Number 07101438), previously known as Moray Offshore Renewables Limited and having its registered office at C/O Shepherd And Wedderburn LLP, Condor House, St. Paul's Churchyard, London, EC4M 8AL (previous address 1st floor, 14/18 City Road, Cardiff, CF24 3DL).

5. Right of appeal & legal challenge

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

Yours sincerely,

Marine Scotland Licensing Operations Team

Cc

Banff Harbour Master
The UK Chamber of Shipping
The Crown Estate (Scotland)
The Cruising Association
Invergordon Harbour Master
Lossiemouth Harbour Master
Macduff Harbour Master
The Maritime and Coastguard Agency
Nairn Harbour Master
The Northern Lighthouse Board
Public Representation
Fishing Industry Representative
Royal Yachting Association (Scotland)
The Scottish Fishermen's Federation
Scottish Natural Heritage
Wick Harbour Master