

Minister for Energy, Connectivity and the Islands

## **MORAY OFFSHORE WINDFARM (EAST) LIMITED – SAFETY ZONE APPLICATION**

### **1. Purpose**

- 1.1 To seek your approval to modify the safety zone notice issued on 8 May 2019 to Telford Offshore Windfarm, Stevenson Offshore Windfarm and MacColl Offshore Windfarm, collectively referred to as Moray East Offshore Windfarm, and issue a safety zone notice which is materially different to the recent application made by Moray East Offshore Windfarm on 1 April 2020.

### **2. Priority**

- 2.1 Routine

### **3. Nature of Modification Sought**

- 3.1 Moray Offshore Windfarm (East) Limited (“Moray East” or “the Applicant”), (Company Number 07101438, having its registered office at C/O Shepherd and Wedderburn Llp, Condor House, 10 St. Paul’s Churchyard, London, EC4M 8AL), submitted an application under section 95(2) of the Energy Act 2004 (as amended) (“the 2004 Act”) on 1 April 2020 for an increase in the number of standard construction safety zones at the Moray East Offshore Wind Farm, (“MEOW”) as on the notice issued on 8 May 2019 (“the 2019 safety zone notice”), declaring that such areas as are specified or described in the notice are to be declared safety zones. Further detail on Moray East and the 2019 safety zone notice is found in Annex 2 (Background and consultation responses).
- 3.2 Moray East applied to the Scottish Ministers for an increase from three safety zones, as approved in the 2019 safety zone notice, to no more than ten mandatory “rolling” 500 metre safety zones at any one time. The application proposed safety zones be established around each Wind Turbine Generator (“WTG”) and Offshore Substation Platform (“OSP”) (hereafter referred to as the “renewable energy installation”) and/or the foundations whilst construction activities are in progress. The application sought that Service Operations Vessels (“SOVs”) could trigger safety zones whilst undertaking walk-to-work activities during the construction phase.
- 3.3 The 2019 safety zone notice declared that SOVs could trigger a 500 metre safety zone during walk-to-work activities taking place during construction and major maintenance. The application submitted by Moray East did not request changes to the 2019 safety zone notice in respect of the SOVs aspect or the maintenance zones.

- 3.4 The Maritime and Coastguard Agency (“MCA”) is the statutory consultee responsible for operations in the waters in which a safety zone is proposed or located. Marine Scotland Licensing and Operations Team (“MS-LOT”) previously interpreted the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”) that any vessel attached or anchored to a structure could trigger a 500 metre safety zone. Following comments from the MCA and discussion around the interpretation of the 2007 Regulations, MS-LOT no longer considers that SOVs during walk-to-work activities should trigger a 500 metre safety zone.
- 3.5 Further detail on the responsibility of the Scottish Ministers in relation to safety zones is found in Annex 1 (legislative background). The application submitted by the Applicant on 1 April 2020 fulfils all requirements of the 2007 Regulations and the 2004 Act on what must be submitted within an application.
- 3.6 The Application includes an overview of the different stages of the project, a supporting safety case and a marine traffic assessment, including marine traffic data gathered over a 90 day period between 1 May 2010 and 31 July 2010 and a further 28 day period between 4 March 2018 to 31 March 2018. The application also demonstrates consideration of the impacts on other users of the sea of the implementation of any safety zones.
- 3.7 The Applicant sought a safety zone notice declaring the following safety zones:

During Construction	<i>Mandatory “rolling” 500 metre (m) safety zones established around each wind farm or OfTI structure (both (WTGs and OSPs) and/or their foundations whilst construction works are in progress, as indicated by the presence of a construction vessel, (including SOVs, whilst displaying Restricted in their Ability to Manoeuvre (“RAM”) status). Triggering of the safety zone will only include the SOV when it is attached to or on station next to a structure. No more than ten of these 500 m safety zones will be active at any one time.</i>
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- 3.8 It was proposed in the Application that the 500 metre safety zones would be implemented on a rolling basis to ensure that safety zones were only “live” for those specific areas in which construction activities were taking place.

- 3.9 The Applicant did not apply for any changes to the safety zones approved on 8 May 2019 for the operations and maintenance phase, which will remain as declared excluding the SOV aspect:

During Construction	<p><i>A 50 metre radius around partially completed WTGs and OSPs where work is not underway and the risk assessments identify a need.</i></p> <p><i>A 50 metre radius around each completed WTG and OSP prior to commissioning and as required by a risk assessment process.</i></p>
During Major maintenance	<p><i>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.</i></p>

#### 4. **Publication and Consultation**

- 4.1 The consultation period ran from 29 April 2020 to 4 June 2020, a period of 37 days, exceeding the 28 day minimum consultation period set out in the 2007 Regulations. Copies of the application were also available to view on the Moray East website and the Marine Scotland website.
- 4.2 A public notice was published in accordance with the requirements of the 2007 Regulations in the Fishing News and Press & Journal for two consecutive weeks and once in The Herald, Kingfisher Bulletin, Lloyd's List and the Edinburgh Gazette.
- 4.3 Copies of the public notices were also issued to the harbour masters of ports likely to be affected by the application and the relevant office of the MCA, in line with the requirements of the 2007 Regulations, requesting them to display the public notice at an address accessible, during normal office hours, to members of the public likely to be affected by the application for a minimum of 14 days.
- 4.4 The Covid-19 outbreak resulted in restricted public access to buildings and risked the possibility that a public notice may not be displayed or seen. The Scottish Ministers therefore requested that the Applicant carried out additional steps to ensure that all relevant and interested parties were served a notice of the application. The notice of application was sent to a variety of organisations and members of the public, including local fishing representatives and ports, and any other parties on the Moray East notice to mariners distribution list. A copy of the notice was provided to harbour masters at Fraserburgh, MacDuff, Banff, Lossiemouth, Wick, Nairn, Lybster, and to Highland Council Harbours, Moray Council Harbours, Port of Inverness and Cromarty Firth Port Authority. Each were asked to display the notice, if they deemed it appropriate.

## 5. Consultation responses

5.1 Comments on the application were invited by the Applicant from Nature Scot (previously known as Scottish National Heritage), the MCA, the Northern Lighthouse Board (“NLB”), UK Chamber of Shipping (“UK CoS”), the Scottish Fishermen’s Federation (“SFF”), the Scottish White Fish Producers Association (“SWFPA”), the Royal Yachting Association (“RYA”), as well as from ports and harbours and other legitimate users of the sea which may be affected by the establishment of safety zones.

5.2 A total of nine responses were received by the Applicant. The responses from individual consultees, together with the Applicant’s reply and the MS-LOT consideration in each case, can be found at Annex 2.

5.3 The MCA raised some comments about the application, the detail of which is provided below. The SFF and SWFPA jointly responded that they objected to the application.

5.4 The key points raised by the MCA are as follows:

- I. The use of SOVs for walk-to-work activities should not by itself trigger a 500 metre safety zone during either construction or major maintenance phases, and that a vessel must be carrying out construction activities (or maintenance activities in the operational phase) for it to be classed as a construction (or maintenance) vessel under the Regulations.
- II. The application lacked justification for the need for up to ten safety zones, resulting in the MCA requesting details on how ten areas of construction would be monitored and safely managed at the same time.
- III. Activities related to inter array cable installation, except where the cable is being pulled into the turbine, cable burial and rock dumping, and export cable installation, are not included in the definition of construction activities under the 2007 Regulations and should not trigger a safety zone.

5.5 Resolution:

- I. The Applicant provided justification for the need for ten safety zones to the MCA. The MCA responded that it had received acceptable clarification about the need for the increase and was reassured that effective monitoring arrangements will be in place. The MCA confirmed to MS-LOT that it raised no objections to the increase in the number of construction safety zones from three to ten.
- II. The Applicant confirmed that export and inter-array cable works that would trigger a 500 metre safety zone, refers to the cable pull in works which is directly related to a renewable energy installation, thereby triggering a safety zone under the 2007 Regulations. The cables are laid out from the cable lay vessel, they are then pulled up into the WTG or the OSP jacket

so that they can then be connected to the electrical equipment inside the WTG or OSP topsides.

- III. The Applicant stated that SOVs would be involved in WTG commissioning which would require the lifting of testing and commissioning equipment onto the renewable energy structure.

5.6 In response to the comments raised by the MCA, as well as the SFF and SWFPA, which are set out in more detail from paragraph 5.9 onwards, the Applicant reviewed the number of safety zones requested against the activities triggering a safety zone. The Applicant identified the safety zones that could be replaced by compliance with the International Regulations for Preventing Collisions at Sea (“COLREGs”). The Applicant reduced the number of safety zones requested during construction from ten to eight.

5.7 MS-LOT is satisfied that there are appropriate reporting procedures and systems in place and that good seamanship and communication, with adherence to the COLREGs, will be undertaken without the need for SOVs to trigger a safety zone during walk-to-work activities. MS-LOT is also satisfied that the application includes construction activities which will trigger a safety zone because they are related directly to a renewable energy installation, as required in the 2007 Regulations.

5.8 The SFF and SWFPA submitted a joint response to the consultation and objected on the basis of the reduction of available fishing space when safety zones are in place and lack of justification within the application of the need for ten safety zones.

5.9 The key points raised by the SFF and SWFPA are outlined below:

- I. There was no substantial evidence within the application to support the claim that a risk assessment had highlighted a need for the ‘worst case scenario’ of ten 500 metre safety zones.
- II. Concern about fishing boats’ transit through the wind farm area and available fishing space and requested that the activity should not reach the level of three large vessels with concomitant safety zones.

5.10 Resolution:

- I. The Applicant provided the construction schedule that included information on the number of safety zones requested during the construction period and the activity each safety zone would cover. The Applicant identified the safety zones that could be replaced by compliance with COLREGs and reduced the number of safety zones requested from ten to eight. The SFF was satisfied by the construction schedule as evidence of the need for a higher number of safety zones to be active at one time during construction.
- II. Following liaison with the SFF and SWFPA, MS-LOT agreed that the safety zones notice will declare that no more than two out of the eight active safety

zones during construction can be established concomitant to each other. SFF was satisfied with the proposal and lifted its objection to the application.

## 6. Options

- 6.1 The MCA responded to the consultation on the 2019 safety zone application stating that SOVs should not trigger a 500 metre safety zone and that the use of SOVs should fit the internationally recognised law of the sea through maintaining safe distances and sufficient look out via visual observations. MS-LOT adopted the position that under the 2007 regulations, any vessel attached to a structure should trigger a safety zone, and that SOVs in RAM status that are on station next to a WTG or OSP, would trigger a safety zone.
- 6.2 Following discussion with the MCA on the 2020 application and the interpretation of the 2007 Regulations, MS-LOT agreed that SOVs should not trigger a safety zone where they are used solely for walk-to-work activities and not involved in construction works. MS-LOT proposes to modify the previous safety zone notice dated 8 May 2019 to exclude the use of SOVs during walk-to-work activities.
- 6.3 In response to consultation comments from the SFF and the SWFPA, the Applicant has reduced the number of safety zones applied for from ten to eight. MS-LOT therefore proposes to issue a safety zone notice for eight safety zones, but with no more than two safety zones sufficiently close to one another as to have the effect of a larger, continuous safety zone.
- 6.4 Annex 1 details the options available to the Scottish Ministers under section 95 of the 2004 Act. Under section 95(6)(g) of the 2004 Act, the Scottish Ministers may choose to modify or revoke a previous notice.
- 6.5 Schedule 16, paragraph 5 to the 2004 Act provides the procedure where the Scottish Ministers are proposing to issue a safety zone notice, including in terms that are materially different from those applied for.
- 6.6 On consideration of the application and the responses received from the MCA, and the SFF and the SWFPA, MS-LOT opted to issue a single safety zone notice to both modify a previous safety zone notice (for the reasons set out in Part 5 above), and to issue a safety zone notice in terms that are materially different from those applied for, in regard to the use of SOVs.

## 7. Modification of a Safety Zone Notice and Materially Different Safety Zone Notice - Notice under Schedule 16

- 7.1 MS-LOT considered the application in relation to the request for mandatory 500 metre safety zones around all construction works, including around SOVs, during walk-to-work activities, alongside the consultation responses.
- 7.2 MS-LOT concluded that sufficient procedures are already in place regarding the safety of vessels and personnel during walk-to-work activities. In so far as “construction” and “major maintenance” are related to the transport of personnel to

the renewable energy installation to undertake such activities, a 500 metre safety zone should not be triggered where SOVs are utilised.

- 7.3 Under Schedule 16, paragraph 5(2), of the 2004 Act, where the Scottish Ministers propose to issue a safety zone notice that is materially different from the original safety zone application, and without holding a public inquiry, a notice of the proposal must be published in a way that brings it to the attention of persons likely to be affected by it. In addition, the notice of the proposal must be served on such persons considered appropriate. The notice must include a map describing where the relevant renewable energy installation is to be, or is being constructed, extended, operated or decommissioned; the waters in relation to which any declaration proposed will establish a safety zone; and any other provisions that the Scottish Ministers propose to include in the safety zone notice.
- 7.4 Under section 95 of the 2004 Act, and pursuant to paragraphs 5(1)(b) and 5(2)(b) of Schedule 16 of the 2004 Act, MS-LOT, on behalf of the Scottish Ministers, served a notice to the Applicant on 7 October 2020, which stated that Scottish Ministers propose to modify a previous safety zone notice, and issue a safety zone in terms that are materially different from those applied for.
- 7.5 Separate correspondence was sent to those consultees with an interest in the safety zone application: the MCA, NLB, Royal Yachting Association Scotland, NatureScot, the SFF, the SWFPA and the UK CoS advising them of the notice served. The notice was also published on Marine Scotland's website.
- 7.6 In line with the 2007 Regulations, a period of 28 days was given for any objections to be submitted from interested parties, and for the Applicant to forward any objections to the proposal, all in accordance with Schedule 16 to the 2004 Act.

## 8. **Response to the Notice**

- 8.1 No objections to the notice were received by the Scottish Ministers from consultees with an interest in the safety zone application.
- 8.2 The Applicant responded by stating that it had no objections to the proposed modifications to the safety zone notice.

## 9. **Public Inquiry Advice**

- 9.1 MS-LOT is satisfied that the application for a safety zone received on 1 April 2020 was suitably advertised under the terms of the 2004 Act and the 2007 Regulations and that the regulatory requirements for consultation have been complied with. In addition, MS-LOT is satisfied that the Applicant has responded to the consultation responses received and no further updates are required to the application and the supporting documentation.
- 9.2 No objections were received regarding the notice served on behalf of the Scottish Ministers of the proposal for a safety zone for reasons of a material difference to the originally proposed safety zone.

9.3 MS-LOT is satisfied that a public inquiry would not provide any new or additional material for the Minister's consideration and would advise that a public inquiry is not required in this instance.

## 10. Recommendations

10.1 MS-LOT is satisfied that due to the high level of marine traffic in the area, it is appropriate to issue a safety zone notice specifying a rolling programme of safety zones during the construction, operation and maintenance phases of the project.

The implementation of "rolling safety zones" minimises potential disruption for other marine users, by restricting implementation to certain circumstances and time-frames and is more proportionate than permanent exclusion zones. MS-LOT concludes that the implementation of such proportionate safety zones is appropriate for the purpose of securing the safety of:

- a) the renewable energy installation or its construction, extension or decommissioning,
- b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
- c) individuals in or on the installation or other installations in that vicinity, and vessels in that vicinity or individuals on such vessels.

10.2 MS-LOT recommends that the Scottish Ministers approve and issue a consolidated safety zone notice that is materially different from that applied for, in accordance with paragraph 5(1)(b) of Schedule 16, and modifies the safety zone notice issued 8 May 2019, in accordance with section 95(6)(g). The modified safety zone notice recommended for approval is attached at Annex 3.

10.3 The modified safety zone notice will exclude SOVs where the SOVs are used solely during 'walk-to-work' activities and are not directly involved in construction or maintenance work.

10.4 The number of approved safety zones will be increased from three to eight, and not to ten, as applied for. The number of concomitant safety zones during construction will be limited to two.

10.5 The modified safety zone notice will declare that the areas specified under the application are safety zones for the purposes of securing the safety of the MEOW, individuals and vessels in its vicinity during the period of its construction, operation and maintenance.



10.6 The modified safety zone notice will replace the provisions in the 2019 safety zone notice with the following corresponding provisions:

During Construction	<i>Mandatory “rolling” 500 metre safety zones established around each renewable energy installation and/or their foundations, whilst construction works are in progress, as indicated by the presence of a construction vessel; however, these safety zones will not be triggered by service operation vessels used during walk-to-work activities. The safety zones will be triggered when a vessel is on station at a renewable energy installation and undertaking construction activities. Up to eight safety zones may be active at any given time and no more than two safety zones can be sufficiently close to one another as to have the effect of a larger continuous safety zone.</i>
	<i>A 50 metre radius around partially completed WTGs<sup>2</sup> and OSPs<sup>3</sup> where work is not underway and the risk assessments identify a need.’</i>
	<i>A 50 metre radius around each completed WTG and OSP prior to commissioning and as required by a risk assessment process.</i>
During Operation	<i>A 500 metre radius around all major maintenance works<sup>1</sup> being undertaken. The safety zones will be active when a vessel involved in undertaking major maintenance works is attached to, or anchored next to, the renewable energy installation; however, these safety zones will not be triggered by service operation vessels used during walk-to-work activities. No more than one 500 metre major maintenance safety zone will be active at any given time during the operational phase.</i>

<sup>1</sup> “major maintenance works” is as defined in The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 and 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.

<sup>2</sup> “WTG” means Wind Turbine Generator.

<sup>3</sup> “OSP” means Offshore Substation Platform.

10.7 The following provisions within the 2019 safety zone notice will be retained after making these modifications:

- *‘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.’*

10.8 A copy of the safety zone notice can be found at Annex 3.

10.9 A separate application will be made for safety zones required during decommissioning.

10.10 Following approval from the Scottish Ministers of the recommendation, MS-LOT on behalf of the Scottish Ministers will administer this process.

## 11. **Right of appeal**

11.1 Where the Scottish Ministers reject an application, the applicant may lodge an appeal. Further detail on the right the appeal the Scottish Ministers’ decision is found at 4.3 of Annex 1. The application is not being rejected and the Applicant has not raised any objections to the proposed safety zone notice that we are recommending.

### **Giulia Agnisola**

Marine Scotland Licensing Operations Team  
Marine Planning and Policy  
9 December 2020

**Annex 1** - Legislative background Page 12

**Annex 2** – Background and Consultation responses Page 15

**Annex 3** - Notice of the Safety Zone Page 21

List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Energy, Connectivity and the Islands	X	X	X		
Cabinet Secretary for the Environment, Climate Change and Land Reform			X		
Cabinet Secretary for the Rural Economy			X		

DG Economy  
 Director of Marine Scotland  
 Mike Palmer  
 David Pratt  
 Zoe Crutchfield  
 Mike Bland  
 Roger May  
 Mark Christie  
 Paul Smith  
 David Stevenson  
 Debbie Ramsay  
 Joanna Dingwall  
 David Moffat  
 Fiona McClean  
 Kenneth Hannaway

## **ANNEX 1**

### **LEGISLATIVE BACKGROUND**

#### **1. Scotland Act 2016**

- 1.1 Section 62 of the Scotland Act 2016 amended the Energy Act 2004 (“the 2004 Act”) and transferred the responsibility for determination of safety zone applications within Scottish waters (or an area of waters in a Scottish part of a Renewable Energy Zone) from the Secretary of State to the Scottish Ministers.

#### **2. Energy Act 2004**

- 2.1 The Scottish Ministers have the power to issue a safety zone notice for renewable energy installations under section 95 of the 2004 Act. A safety zone notice may be issued by the Scottish Ministers following an application or their own initiative. Schedule 16 of the 2004 Act makes further provision about the procedures for the declaration of safety zones.

- 2.2 Section 95(2) states that the Scottish Ministers may issue a notice declaring that such areas as are specified or described in the notice are to be safety zones, if the Minister considers it is appropriate for the purpose of securing the safety of:

- “a) the renewable energy installation or its construction, extension or decommissioning,
- b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
- c) individuals in or on the installation or other installations in that vicinity, or
- d) vessels in that vicinity or individuals on such vessels.”

- 2.3 Section 95(3) provides that the Scottish Ministers may issue a notice for a section 95(2) purpose either on an application by any person; or where no such application is made, on their own initiative.

- 2.4 Section 95(5) states that an area may be declared to be a safety zone only if it is an area around or adjacent to a place where a renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; but a safety zone may extend to waters outside the waters subject to regulation under this section.

- 2.5 Section 95(6) sets out the requirements of a notice and optional exclusions or conditions:

- “Section 95(6)(a) and (b) require that a section 95(6) notice must identify the renewable energy installation and the date it is to come into force or how that date will be determined;
- Section 95(6)(c) states that a section 95(6) notice may provide that the area of a safety zone can be varied by reference to factors specified in, or determinations made in accordance with the notice;
- Section 95(6)(d) states that a notice may provide prohibitions on specified activities carried on within the safety zone;;

- 95(6)(g) provides that a notice may modify or revoke a previous notice; and
  - Section 95(6)(h) provides that a notice may make different provision in relation to different cases.”
- 2.6 Under Section 95(7), where a section 95 notice is issued or a determination is made on that notice, the Scottish Ministers must either:
- a) publish the notice or determination in a way that brings it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
  - b) secure that it is published in this way either by the applicant for the notice; or in the case of a determination made by a person other than the Scottish Ministers, by the applicant for the notice or by the person who made the determination.
- 2.7 Section 96 covers prohibited activities in safety zones. Section 96(4) allows provision for the permissions to apply in relation only to certain specified or described times; and for the permissions to apply only to specified or described persons, vessels, and s purposes.
- 2.8 Paragraph 5 of Schedule 16 to the 2004 Act lists the actions that the Scottish Ministers must undertake where they propose to issue a safety zone notice in terms that are materially different from those applied for.
- 2.9 The Scottish Ministers must publish notice of the proposal and allow those affected by it to raise any objections within a timeframe that is not shorter than the minimum period of the consultation held on the original safety zone application. Where an objection is sent to the Scottish Ministers, they must consider such objection and determine whether a public inquiry is necessary.
3. **Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007**
- 3.1 The application process for applicants to the Secretary of State (interpreted as to the Scottish Ministers following the transfer of powers) is set out in Part 2 of the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”).
- 3.2 Regulation 3 sets out the information required in support of a safety zone application.
- 3.3 Regulations 4 and 5 set out the requirement for an applicant to publish a notice of application and where such notice must be served. Regulation 4 requires the Public Notice to be published for two successive weeks in one or more local newspapers, in Lloyd’s List and in one or more national newspapers, the Edinburgh Gazette and in one or more appropriate fishing trade journals.
- 3.4 Regulation 5 requires that the notice of application must be served within 21 days of the earliest date of publication of the notice upon the Maritime and Coastguard Agency, the Scottish Ministers and the owner (or operator, if a different person), of the relevant renewable energy installation where that person is not the applicant.

- 3.5 Regulation 6 establishes the minimum consultation period of 28 days from the date of publication or service of the notice for receiving objections. If an objection is sent to a person other than the Scottish Ministers, the recipient of the objection must send a copy of the objection to the Scottish Ministers within 14 days. Regulation 7 makes provisions for the publication of notice of a public inquiry, if a public inquiry is to be held under Schedule 16 of the 2004 Act.
4. **Applying for safety zones around offshore renewable energy installation guidance**
- 4.1 It is advised that an application for a safety zone should be completed in accordance with the following Department of Energy and Climate Change (“DECC”) Guidance, [‘Applying for safety zones around offshore renewable energy installations’](#) (November 2011) (“DECC 2011 Guidance”).
- 4.2 Section 4 of the DECC 2011 Guidance sets out the process for applying for a safety zone, which includes the requirement for an application for s.36 consent to consider whether a safety zone is needed as part of the assessment of the impact of the proposed installation on the safety of navigation. The need for, and environmental impact of, safety zones was identified in the original [Environmental Impact Assessment Report \(2018\)](#) which accompanied the applications for the s.36 consent and the Marine Licences under section 20(1) of the Marine (Scotland) Act 2010.

## **ANNEX 2**

### **1. Background and Consultation responses**

- 1.1 On 19 March 2014 the Scottish Ministers granted in favour of Telford Offshore Windfarm Limited (Company Number 07386810), Stevenson Offshore Windfarm Limited (Company Number 07386838) and MacColl Offshore Windfarm Limited (Company Number 07386891), all having their 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), consents under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of Telford Offshore Windfarm, Stevenson Offshore Windfarm and MacColl Offshore Windfarm respectively, collectively referred to as Moray Offshore Windfarm (East) Limited (“Moray East”) or (“the Applicant”). The original s.36 consents were varied by the Scottish Ministers on 22 March 2018 (“the s.36 consents”). Subsequently, on 8 June 2018, the s.36 consents were assigned, with the authority of the Scottish Ministers, to Moray Offshore Windfarm (East) Limited (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.
- 1.2 Moray East Offshore Windfarm will comprise of 100 Wind Turbine Generators (“WTGs”) located approximately 12 nautical miles east of the Caithness coast. Three Offshore Substation Platforms (“OSPs”) and three subsea export cable circuits which shall be installed and will make landfall at Inverboyndie Bay in Aberdeenshire.
- 1.3 On 27 September 2018 the Applicant submitted a safety zone application and supporting documentation for a notice to be issued by the Scottish Ministers under section 95(2) of the Energy Act 2004 (“the 2004 Act”), declaring that areas specified under that application be safety zones during the period of its construction, operation and maintenance. The Maritime and Coastguard Agency (“MCA”) responded to the consultation stating that Service Operations Vessels (“SOVs”) should not trigger a 500 metre safety zone and that the use of SOVs should fit the internationally recognised law of the sea through maintaining safe distances and sufficient look out via visual observations. Marine Scotland took the position that under the 2007 regulations, any vessel attached to a structure should trigger a safety zone, and that SOVs in RAM status that are on station next to a WTG or OSP, would trigger a safety zone.
- 1.4 On 8 May 2019 the Scottish Ministers issued a notice under section 95(2) of the 2004 Act declaring safety zones in the following terms:

During Construction	<i>A mandatory 500 metre (“m”) radius safety zone around each Wind Turbine Generator (“WTG”) and Offshore Substation Platform (“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.</i>
	<i>A 50 m radius around partially completed WTGs and OSPs where work is not underway and the risk assessments identify a need.</i>
	<i>A 50 m radius around each completed WTG and OSP prior to commissioning and as required by a risk assessment process.</i>
During Operations and Maintenance Phase	<i>A 500 m radius around all major maintenance<sup>2</sup> works being undertaken around WTGs and OSPs. No more than one major maintenance zone is permitted at any one time</i>

## 2. Consultation responses

- 2.1 A range of views about the proposed safety zones were submitted by consultees. Whilst there was a general acceptance that safety zones dimensions and applications set out in the application were reasonable measures to secure the safety of mariners and those people working on the WTGs and OSPs, a number of consultees raised issues about aspects of the proposed safety zone. A summary of the responses of individual consultees and the Applicant’s response to the points raised is set out below.
- 2.2 **The Maritime and Coastguard Agency (“MCA”)** whilst supportive of applications for safety zones during construction, major maintenance and decommissioning where large construction vessels are alongside structures, remained of the opinion that the use of SOVs for walk-to-work activities should not by itself trigger a 500 metre safety zone during either the construction or major maintenance phases. The MCA further stated that a safety zone should only be triggered when a vessel is carrying out construction activities (or maintenance activities in the operational phase).
- 2.2.1 The MCA also requested further details on the operational arrangements for managing ten sites, specifically with regards to the number of vessels that would be required and how that would be managed and monitored.

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<sup>2</sup> “Major maintenance” works are defined in The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“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”.



2.2.2 The Applicant held discussions with the MCA and provided clarity on the need for up to ten safety zones at any one time and how the ten sites would be managed. The Applicant also provided reassurance to the MCA that effective monitoring arrangements will be in place for all safety zone locations.

2.2.3 The MCA recommended approval of up to ten safety zones triggered at one time on the basis that the Applicant had provided further clarity on the need for ten safety zones, how the sites and vessels would be managed, and reassurance that effective monitoring arrangements will be in place.

2.2.4 The MCA remained of the opinion that SOVs for walk-to-work should not be triggering 500 metre safety zones and also did not agree with all items listed as construction activities in the Application with the potential to trigger safety zones. Activities that the MCA did not agree to were:

- Inter array cable installation (except where the cable is pulled into the turbine);
- Cable burial and rock dumping; and
- Export Cable installation with vessels approaching the fixed structures for works.

2.2.5 In response, the Applicant confirmed that export and inter-array cable works that would trigger a 500 metre safety zone, refers to the cable pull in works which is directly related to a renewable energy installation, thereby triggering a safety zone under the 2007 Regulations. The cables are laid out from the cable lay vessel, they are then pulled up into the WTG or the OSP jacket so that they can then be connected to the electrical equipment inside the WTG or OSP topsides.

2.2.6 The Applicant stated that SOVs will be involved in WTG commissioning which will require the lifting of testing and commissioning equipment onto the renewable energy structure.

2.2.7 The Applicant highlighted that in line with The International Regulations for Preventing Collisions at Sea 1972 (“COLREGs”), vessels should keep a safe distance away from construction vessels when work is being undertaken and vessels are underway but not making way and display RAM status or anchor lights. Safety zone status would allow this to be clearly defined, reinforcing the safety of both construction vessels and other sea users.

2.2.8 Marine Scotland’s Response – The 2007 Regulations state that:

- I. “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;

and that a “standard safety zone” means:

- II. in the case of the proposed or ongoing construction, extension or decommissioning of a wind turbine, or of major maintenance works in respect of such an installation, a safety zone with a radius of 500

metres measured from the outer edge at sea level of the proposed or existing wind turbine tower;”

2.2.9 The MCA is the statutory consultee with responsibility for ensuring the navigational safety of the marine environment, therefore the Marine Scotland Licensing Operations Team (“MS-LOT”), is satisfied with the MCA representations and that there are appropriate reporting procedures and systems in place for dangerous manoeuvres and COLREGs contraventions cover the use of SOVs. MS-LOT is content not to include the SOVs used for walk-to-work activities as part of the safety zone during the construction, and operation and maintenance phases.

2.3 **NatureScot** offered no comments on the application.

2.4 **The UK Chamber of Shipping (“UK CoS”)** requested clarification on whether the intention was to potentially have ten construction vessels or SOVs operating concurrently on 10 different structures during the construction phase, and of the number of guard vessels that may be used. The UK CoS also stated that it does not support mandatory 500 metre safety zones around partially completed structures at which no work is underway and there are no workers to protect.

2.4.1 The Applicant confirmed that the ten safety zones applied for was the maximum for a ‘worst case scenario’, that 500 metre safety zones will only be used where construction work is ongoing, and 50 metre safety zones will be active around any structure where no vessel is present up to the point of commissioning of the wind farm. The Applicant also confirmed that a single vessel will be designated with the responsibility of safety zone monitoring.

2.4.2 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the UK CoS in its response to the application.

2.5 **The Northern Lighthouse Board (“NLB”)** had no objections to the application and recommended that the Applicant issues a notice to mariners prior to commencement of construction or major maintenance activities, clearly stating the safety zone locations and nature of the activities.

2.5.1 The Applicant acknowledged the requirement to issue notice to mariners at the start of any offshore activity and confirmed they will highlight activated or planned safety zones within that notice (including any activity if applicable) as per NLB advice.

2.5.2 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the NLB in its response to the application.

2.6 **Wick Harbour** offered no comments on the Application.

2.7 **The Cruising Association** noted that the northern part of the wind farm impinges significantly on the route from Wick to Rattray Head and asked for ways to find out what restrictions are in force or planned so that passage can be planned and minimise disruption.

2.7.1 The Applicant advised the Cruising Association that weekly notice of operations and notice to mariners are published on the project website and

stated they would be happy for any individual vessel owners to be added to the distribution list, if required.

2.7.2 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the Cruising Association.

2.8 **The Royal Yachting Association (“RYA”)** offered no comments on the Application

2.9 **The Scottish Fishermen’s Federation (“SFF”) and the Scottish White Fish Producers Association (“SWFPA”)** understood the need for safety zones during construction but objected to the application on the basis that there was no clear justification for the ‘worst case scenario’ of ten, 500 metre safety zones within the application. In addition, the SFF commented that the fishing space left of 128 metres would not ensure that fishing may continue and sought an outcome where activity does not reach three large vessels with concomitant safety zones closing fishing grounds.

2.9.1 In response to the fishing concerns raised by the SFF and the SWFPA, the Applicant stated that details of construction activities will be promulgated in advance to facilitate passage planning. Marine co-ordination, guard vessels and Fisheries Liaison Officers are utilised to ensure fishing communities are aware of activities on the wind farm site, and where possible, to enable fishing activities to continue. The Applicant clarified that even with ten active safety zones, passage through the site would not be prevented and that the busiest fishing seasons will be considered when managing busy installation periods. Ten safety zones would represent the potential peak activity which could be reached and is expected to cover a limited period of time only. Although spacing between adjacent safety zones would be approximately 128 metres, there was no scenario where access to the site could be prevented and the ‘worst case scenario’ of three large vessels per structure is the maximum number of contractors expected at one structure.

2.9.2 MS-LOT discussed the Applicant’s response with the SFF and the SWFPA and established that they were still unclear about the justification for ten safety zones and continued to have concerns about the use of three large vessels with concomitant safety zones.

2.9.3 MS-LOT agreed with the SFF and the SWFPA’s concern that three large vessels with concomitant safety zones would not ensure fishing could continue within the wind farm site. MS-LOT proposed to the SFF and the SWFPA that this be limited to no more than two vessels with concomitant safety zones.

2.9.4 The SFF and the SWFPA indicated that they would be in favour of a maximum of two vessels with concomitant safety zones and would require strong justification for the level of ten safety zones before they could reconsider their position.

2.9.5 The Applicant reviewed the number of safety zones requested against the activities triggering a safety zone and identified the safety zones that could be replaced by compliance with COLREGS. The number of safety zones requested decreased from ten to eight during construction.

- 2.9.6 The SFF and SWFPA responded that they were content with the proposal to reduce the number of safety zones requested from ten to eight and that no more than two out of the eight active safety zones during construction can be established concomitant to each other.
- 2.9.7 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the SFF and SWFPA.

## Annex 3

### Notice of the Safety Zone

MS.MarineRenewables@gov.scot



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

DD MONTH YYYY

Dear Mr Sunier,

#### **ENERGY ACT 2004: OFFSHORE WIND ELECTRICITY GENERATING STATION**

#### **SAFETY ZONE APPLICATION – MORAY EAST OFFSHORE WIND FARM APPROXIMATELY 12NM FROM THE CAITHNESS COAST.**

#### **1. The Application**

- 1.1. I am directed by the Scottish Ministers to refer to the Safety Zone application and supporting documentation (“the Application”) submitted on 1 April 2020 by Moray Offshore Windfarm (East) Limited (“the Applicant”) to the Scottish Ministers for a notice (“a safety zone notice”) to be issued by the Scottish Ministers under section 95(2) of the Energy Act 2004 (as amended) (“the 2004 Act”), declaring that the areas specified in the Application be safety zones for the purpose of securing the safety of the Moray East Offshore Wind Farm (“the Development” or “MEOW”) and individuals and vessels in its vicinity during the periods of construction.
- 1.2. The application dated 1 April 2020, proposed an increase to the number of 500 metre safety zones that would be implemented during construction on a rolling basis from three to ten, to ensure that safety zones are only “live” for those specific areas in which activities are taking place. The Application did not request any changes to the approved safety zones during major maintenance.
- 1.3. A previous safety zone notice was issued by the Scottish Ministers under section 95(2) of the 2004 Act on 8 May 2019. The safety zone

notice included Service Operations Vessels (“SOVs”), which would trigger a safety zone when in Restricted Ability to Manoeuvre (“RAM”) status and on station next to a Wind Turbine Generator (“WTG”) or Offshore Substation Platform (“OSP”).

- 1.4. On 8 May 2019 the Scottish Ministers issued a notice under section 95(2) of the 2004 Act declaring safety zones in the following terms:

<p>During Construction</p>	<p><i>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 each completed WTG and OSP prior to commissioning and as required by a risk assessment process.</i></p> <p><i>A 50 metre radius around partially completed WTGs and OSPs where work is not underway and the risk assessments identify a need.</i></p> <p><i>A 50 metre radius around each completed WTG and OSP prior to commissioning and as required by a risk assessment process.</i></p>
<p>During Major maintenance</p>	<p><i>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</i></p>

- 1.5. The Application dated 1 April 2020 requested a safety zone notice declaration in the following terms:

<p>During Construction</p>	<p><i>Mandatory “rolling” 500 metres (m) safety zones established around each wind farm or OfTI structure (both WTGs and OSPs) and/or their foundations whilst construction works are in progress, as indicated by the presence of a construction vessel, (including SOVs, whilst displaying Restricted in their Ability to Manoeuvre (“RAM”) status). Triggering the safety zone will only include SOVs when attached to or on station next to a structure. No more than ten of these 500 m safety zones will be active at any one time.</i></p>
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- 1.6. A notice of application (the “Public Notice”) was published and served by the Applicant in accordance with the requirements of the 2004 Act and regulations 4 and 5 of the The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”). Due to the Covid-19 outbreak the Scottish Ministers requested that the Applicant carried out additional steps to ensure that all relevant and interested parties were served a notice of the application.

## 2. Representations

- 2.1. The Scottish Ministers note that a range of views concerning the safety zones were requested by the Applicant. There was a general acceptance that the dimensions and applications of the safety zones set out in the application were reasonable to secure the safety of mariners and those people working on the wind turbines, including their foundations/substructures. A full summary of the views of all individual consultees and the Applicant's response to the points raised is set in Annex 1.
- 2.2. The Maritime and Coastguard Agency ("MCA") raised some comments about the application, the detail of which is written below. The Scottish Fishermen's Federation ("SFF") and the Scottish White Fish Producers Association ("SWFPA") jointly responded that they objected to the application.
- 2.3. The key points raised by the MCA are set out below:
  - I. The use of SOVs for walk-to-work activities should not in the MCA's view by itself trigger a 500 metre safety zone during either construction or major maintenance phases. The MCA also stated that a vessel must be carrying out construction activities (or maintenance activities in the operational phase) for it to be classed as a construction (or maintenance) vessel under the regulations.
  - II. The application, according to the MCA, lacked a justification for the need for up to ten safety zones, with the MCA requesting details on how ten areas of construction would be monitored and safely managed at the same time.
  - III. Activities related to inter array cable installation, except where the cable is being pulled into the turbine, cable burial and rock dumping, and export cable installation are not included in the definition of construction activities under the 2007 Regulations and should not in the MCA's view trigger a safety zone.
- 2.4. Resolution:
  - I. The Applicant provided their justification for the need for ten safety zones to the MCA. The MCA responded that it had received acceptable clarification about the need for the increase and was reassured that effective monitoring arrangements will be in place. The MCA confirmed to MS-LOT that it raised no objections to the increase in the number of construction safety zones from three to ten.
  - II. The MCA confirmed to MS-LOT that it raised no objections to the increase in the number of construction safety zones from three to ten.

- III. The Applicant confirmed that export and inter-array cable works that would trigger a 500 metre safety zone, refers to the cable pull in works which is directly related to a renewable energy installation, thereby triggering a safety zone under the 2007 Regulations. The cables are laid out from the cable lay vessel, they are then pulled up into the WTG or the OSP jacket so that they can then be connected to the electrical equipment inside the WTG or OSP topsides.
  - IV. The Applicant stated that SOVs would be involved in WTG commissioning which would require the lifting of testing and commissioning equipment onto the renewable energy structure.
- 2.5. In response to the comments raised by the MCA and then the SFF and the SWFPA, which are set out in paragraph 2.6 onwards, the Applicant reviewed the number of safety zones requested against the activities triggering a safety zone. The Applicant identified the safety zones that could be replaced by compliance with the International Regulations for Preventing Collisions at Sea (“COLREGs”). The Applicant reduced the number of safety zones requested during construction from ten to eight.
- 2.6. The SFF and the SWFPA objected to the application on the basis of the reduction of available fishing space when safety zones are in place and lack of justification within the Application of the need for ten safety zones.
- 2.7. The key points raised by SFF and the SWFPA are outlined below:
- I. There was no substantial evidence within the application to support the claim that a risk assessment had highlighted a need for the ‘worst case scenario’ of ten 500 metre safety zones.
  - II. Concern about fishing boats’ transit through the wind farm area and available fishing space and requested that the activity should not reach the level of three large vessels with concomitant safety zones.
- 2.8. Resolution:
- I. The Applicant provided the construction schedule that included information on the number of safety zones requested during the construction period and the activity each safety zone would cover. The Applicant identified the safety zones that could be replaced by compliance with COLREGS and reduced the number of safety zones requested from ten to eight. The SFF was satisfied by the construction schedule as evidence of the need for a higher number of safety zones to be active at one time during construction.
  - II. Following liaison with the SFF and the SWFPA, MS-LOT agreed that the safety zones notice will declare that no more than two out of the eight active safety zones during construction can be established concomitant to each other. SFF was satisfied with the proposal and lifted its objection to the application.



### 3. Considerations of the Scottish Ministers

- 3.1 Following receipt of an application for a safety zone, the Scottish Ministers have several options. In line with Section 95(2) of the 2004 Act, MS-LOT recommended that the Scottish Ministers issue a safety zone notice that (i) is a modification to the safety zone notice issued 8 May 2019; and (ii) is in terms that are materially different from that applied for, in accordance with section 95(6)(g) and paragraphs 5(1)(b) and 5(2)(b) of Schedule 16 of the 2004 Act. The reasons for this approach are set out below.
- 3.2 The MCA had responded to the consultation on the 2019 safety zone application stating that SOVs should not trigger a 500 metre safety zone and that the use of SOVs should fit the internationally recognised law of the sea through maintaining safe distances and sufficient look out via visual observations. Marine Scotland adopted the position that under the 2007 regulations, any vessel attached to a structure should trigger a safety zone, and that SOVs in RAM status that are on station next to a WTG or OSP, would trigger a safety zone.
- 3.3 Following discussion with the MCA on the 2020 safety zones application and the interpretation of the 2007 Regulations, MS-LOT agreed that SOVs should not trigger a safety zone where they are used solely for walk-to-work activities and not involved in construction works.
- 3.4 In response to consultation comments from the SFF and the SWFPA, the Applicant has reduced the number of safety zones applied for from ten to eight. The Scottish Ministers therefore propose to issue a safety zone notice for eight safety zones.
- 3.5 The Scottish Ministers propose to modify the 2019 safety zone notice to exclude the use of SOV's during walk-to-work activities and to issue a safety zone notice in terms materially different from that applied for, by approving eight of the ten safety zones applied for, and approving no more than two safety zones concomitant to each other.
- 3.6 Under section 95(6)(g) of the 2004 Act, the Scottish Ministers may choose to modify or revoke a previous notice. Under Schedule 16, paragraph 5 of the 2004 Act, where the Scottish Ministers propose to issue a safety zone notice that is materially different in terms from those applied for a notice of the proposal, and without holding a public inquiry, a notice of the proposal must be published in a way that brings it to the attention of persons likely to be affected by it. In addition, the notice of the proposal must be served on such persons considered appropriate. The notice must include a map describing where the relevant renewable energy installation is to be, or is being constructed, extended, operated or decommissioned; the waters in relation to which any declaration proposed will establish a safety zone and any other provisions that the Scottish Ministers propose to include in the safety zone notice.
- 3.7 The notice of the proposal must also state the period within and the manner which objections to the proposal may be made. The period for

making objections to such a notice must not be shorter than the minimum period which would be applicable if the notice were being published in respect of an application for a safety zone notice.

- 3.8 Under section 95 and Schedule 16 of the 2004 Act, MS-LOT on behalf of the Scottish Ministers, served a notice to the Applicant on 7 October 2020, pursuant to section 95((6)(g) and paragraph 5(1)(a) and (b) of Schedule 16 of the 2004 Act. This notice stated that the Scottish Ministers proposed to issue a safety zone in terms that were materially different from those applied for, and excluded triggering a 500 metre safety zone where SOVs are used during 'walk-to-work' activities and where these vessels are not directly involved in construction and maintenance works.
- 3.9 Separate correspondence was sent to those consultees with an interest in the safety zone application, the MCA, Northern Lighthouse Board ("NLB"), Royal Yachting Association Scotland, NatureScot, SFF, SWFPA and the UK CoS advising them of the notice served. The notice was also published on Marine Scotland's website.
- 3.10 A period of 28 days was given to allow for any comments to be submitted from interested parties and for the Applicant to forward any objections to the proposal, all in accordance with Schedule 16 to the 2004 Act.
- 3.11 No objections to the notice were received.
- 3.12 The Applicant responded by stating that it had no objections to the proposed modifications to the safety zone notice.

#### **4. The decision of the Scottish Ministers**

- 4.1 In line with the points set out in section 2 above, the Scottish Ministers:
- choose to modify the previous safety zone notice issued 8 May 2019 under section 95(6)(g) of the 2004 Act;
  - have considered the construction schedule provided by the Applicant and are satisfied that there is sufficient evidence to justify a reduction in the number of safety zones applied for from ten to eight;
  - have considered the points raised from the MCA and are satisfied that there are appropriate reporting procedures and systems in place for dangerous manoeuvres and COLREGs contraventions cover the use of SOVs. Therefore, the Scottish Ministers are content that the transition of personnel to the renewable energy installation to undertake the major maintenance would not trigger a 500 metre safety zone where SOVs were utilised;
  - have considered the points raised from the SFF and SWFPA and are satisfied that there is justification for an increase in safety zones, and no more than two safety zones should be concomitant to each other to mitigate the impact on vessel transit and access to fishing grounds;

- note “*Major maintenance*” works and “*standard safety zone*”, as defined in the 2007 Regulation;
- note that the MEOW will be marked and lit in accordance with relevant requirements as detailed in the approved Lighting and Marking Plan;
- note that as indicated in the application, the Applicant has confirmed that there will be guard vessel(s) during the construction, and operation and maintenance phases of the project;
- note that the Applicant has stated that any infringements of the safety zone deemed as representing dangerous behaviour, unsafe navigational acts (as required under the relevant regulations implementing international conventions), or repeated entry will be reported to Marine Scotland and the MCA as the relevant authorities.
- note that the Applicant will issue regular notices to mariners and has also indicated it will promulgate relevant information about construction operations and safety zones through Kingfisher fortnightly bulletins, weekly notices of operations etc. (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;
- note that 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;
- note that 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;
- note that the Applicant has stated that there would be a maximum of eight safety zones of 500 metre radius around structures at any particular time during construction;
- having considered the representations and all other material considerations, does not consider it appropriate for a public inquiry to be held with respect to the application or the revised safety zone proposed by the Scottish Ministers; and
- note that a separate application will be made for the decommissioning phase.

## 5. The Issuing of the Notice declaring a safety zone

- 5.1 On 19 March 2014 the Scottish Ministers granted in favour of Telford Offshore Windfarm Limited (Company Number 07386810), Stevenson Offshore Windfarm Limited (Company Number 07386838) and MacColl Offshore Windfarm Limited (Company Number 07386891) ), all having their 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), consents under section 36 (“s.36”) of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of Telford Offshore Windfarm, Stevenson Offshore Windfarm and MacColl Offshore Windfarm respectively, collectively referred to as Moray East Offshore Windfarm (“MEOW”) or (“the Applicant”). The original s.36 consents were varied by the Scottish Ministers on 22 March 2018 (“the s.36 consents”). Subsequently, on 8 June 2018, the s.36 consents were assigned, with the authority of the Scottish Ministers, to Moray Offshore Windfarm (East) Limited (Company Number 07101438) (“the Applicant”), 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.
- 5.2 For the purposes of this notice, the MEOW comprises not more than 100, three-bladed horizontal axis WTGs and associated inter-array cabling, with up to three offshore substation platforms and associated interconnector cables for which consent was granted by the Scottish Ministers under section 36 of the Electricity Act 1989.
- 5.3 In light of the matters set out above, the Scottish Ministers consider that the declaration of safety zones of the type requested during the construction, phase of the Development, as revised by the Scottish Ministers in relation to SOVs, number of safety zones declared and concomitant to each other, are appropriate for the purposes of securing the safety of:
- (a) the renewable energy installation or its construction, extension or decommissioning,
  - (b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
  - (c) individuals in or on the installation or other installations in that vicinity, or
  - (d) vessels in that vicinity or individuals on such vessels.
- 5.4 The implementation of “rolling safety zones” minimises potential disruption for other marine users, by restricting implementation to certain circumstances and time-frames and is more proportionate than permanent exclusion zones. The Scottish Ministers conclude that the implementation of such proportionate safety zones is required to secure the purposes set out at section 95(2) of the 2004 Act (as listed above in para. 5.3), whilst minimising disruption to other marine users.

- 5.5 The Scottish Ministers under section 95(6)(g) and pursuant to paragraph 5(1)(b) of Schedule 16 of the 2004 Act issue a modification to the safety zone notice issued 8 May 2019, and issue a safety zone notice in terms that are materially different from that applied for, with regard to the use of SOVs, number of safety zones active at one time and number of concomitant safety zones during construction.
- 5.6 The modified safety zone notice declares that the areas specified under the application, are safety zones for the purposes of securing the safety of the MEOW, individuals and vessels in its vicinity during the period of its construction, operation and maintenance, however, the safety zone notice will exclude SOVs where the SOVs are used solely during ‘walk-to-work’ activities and not directly involved in construction or maintenance work.
- 5.7 The Scottish Ministers hereby issue this notice modifying a previous safety zone notice by replacing the provisions in the 2019 safety zone notice with the following corresponding provisions:

During Construction	<i>Mandatory “rolling” 500 metre safety zones established around each renewable energy installation and/or their foundations, whilst construction works are in progress, as indicated by the presence of a construction vessel; however, these safety zones will not include service operation vessels used during walk-to-work activities. The safety zones will be triggered when a vessel is on station at a renewable energy installation and undertaking construction activities. Up to eight safety zones may be active at any given time and no more than two safety zones can be sufficiently close to one another as to have the effect of a larger continuous safety zone.</i>
	<i>A 50 metre radius around partially completed WTGs<sup>1</sup> and OSPs<sup>2</sup> where work is not underway and the risk assessments identify a need.’</i>
	<i>A 50 metre radius around each completed WTG and OSP prior to commissioning and as required by a risk assessment process.</i>

During Operation	<i>A 500 metre radius around all major maintenance works<sup>3</sup> being undertaken. The safety zones will be active when a vessel involved in undertaking major maintenance works is attached to, or anchored next to, the renewable energy installation; however, these safety zones will not include service operation vessels used during walk-to-work activities. No more than one 500 metre major maintenance safety zone will be active at any given time during the operational phase.</i>
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5.8 This notice comes into force from the date of this letter.

Yours sincerely,

Marine Scotland Licensing Operations Team

Cc

The Maritime and Coastguard Agency  
The Northern Lighthouse Board  
The UK Chamber of Shipping  
NatureScot  
The Scottish Fishermen's Federation  
The Scottish White Fish Producers Association  
The Royal Yachting Association  
Fraserburgh Harbour  
MacDuff Harbour  
Banff Harbour  
Lossiemouth Harbour  
Wick Harbour  
Nairn Harbour  
Lybster Harbour,  
Highland Council Harbours  
Moray Council Harbours  
Port of Inverness  
Cromarty Firth Port Authority

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<sup>1</sup> "WTG" means Wind Turbine Generator.

<sup>2</sup> "OSP" means Offshore Substation Platform.

<sup>3</sup> "major maintenance works" is as defined in The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 and 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.

## **Annex 1 Representations to the original application for a safety zone**

1. **The Maritime and Coastguard Agency (“MCA”)** whilst supportive of applications for safety zones during construction, major maintenance and decommissioning where large construction vessels are alongside structures, remained of the opinion that the use of Service Operations Vessels (“SOVs”) for walk-to-work activities should not by itself trigger a 500 metre safety zone during either the construction or major maintenance phases. The MCA further stated that a safety zone should only be triggered when a vessel is carrying out construction activities (or maintenance activities in the operational phase).
  - 1.1 The MCA also requested further details on the operational arrangements for managing ten sites, specifically with regards to the number of vessels that would be required and how that would be managed and monitored.
  - 1.2 The Applicant held discussions with the MCA and provided clarity on the need for up to ten safety zones at any one time and how the ten sites would be managed. The Applicant also provided reassurance to the MCA that effective monitoring arrangements will be in place for all safety zone locations.
  - 1.3 The MCA recommended approval of up to ten safety zones triggered at one time on the basis that the Applicant had provided further clarity on the need for ten safety zones, how the sites and vessels would be managed, and reassurance that effective monitoring arrangements will be in place.
  - 1.4 The MCA remained of the opinion that SOVs for walk-to-work should not be triggering 500 metre safety zones. The MCA did not agree with all items listed as construction activities in the Application with the potential to trigger safety zones, specifically the inclusion of:
    - Inter array cable installation (except where the cable is pulled into the turbine);
    - Cable burial and rock dumping; and
    - Export Cable installation with vessels approaching the fixed structures for works.
  - 1.5 In response the Applicant confirmed that export and inter-array cable works that would trigger a 500 metre safety zone refers to the cable pull in works which are directly related to a renewable energy installation, thereby triggering a safety zone under the 2007 Regulations. The cables are laid out from the cable lay vessel, they are then pulled up into the Wind Turbine Generator (“WTG”) or the Offshore Substation Platform (“OSP”) jacket so that they can then be connected to the electrical equipment inside the WTG or OSP topsides.
  - 1.6 The Applicant stated that SOVs will be involved in WTG commissioning which will require the lifting of testing and commissioning equipment onto the renewable energy structure.

- 1.7 The Applicant highlighted that in in line with The International Regulations for Preventing Collisions at Sea 1972 (“COLREGs”), vessels should keep a safe distance away from construction vessels when work is being undertaken and vessels are underway but not making way and display RAM status or anchor lights. Safety zone status would allow this to be clearly defined, reinforcing the safety of both construction vessels and other sea users.
- 1.8 Marine Scotland’s Response – The 2007 Regulations state that:
- I. “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;
- and that a “standard safety zone” means:
- II. in the case of the proposed or ongoing construction, extension or decommissioning of a wind turbine, or of major maintenance works in respect of such an installation, a safety zone with a radius of 500 metres measured from the outer edge at sea level of the proposed or existing wind turbine tower;
- 1.9 The MCA is the statutory consultee with responsibility for ensuring the navigational safety of the marine environment, therefore the Marine Scotland Licensing Operations Team (“MS-LOT”), is satisfied with the MCA representations and that there are appropriate reporting procedures and systems in place for dangerous manoeuvres and COLREGs contraventions cover the use of SOVs. MS-LOT is content not to include the SOVs used for walk-to-work activities as part of the safety zone during the construction, and operation and maintenance phases.
2. **NatureScot** offered no comments on the application.
3. **The UK Chamber of Shipping (“UK CoS”)** requested clarification on whether the intention was to potentially have ten construction vessels or SOVs operating concurrently on 10 different structures during the construction phase, and of the number of guard vessels that may be used. The UK CoS also stated that it does not support mandatory 500 metre safety zones around partially completed structures at which no work is underway and there are no workers to protect.
- 3.1 The Applicant confirmed that the ten safety zones applied for was the maximum for a ‘worst case scenario’, that 500 metre safety zones will only be used where construction work is ongoing, and 50 metre safety zones will be active around any structure where no vessel is present up to the point of commissioning of the wind farm. The Applicant also confirmed that a single vessel will be designated with the responsibility of safety zone monitoring.



- 3.2 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the UK CoS in its response to the application.
4. **The Northern Lighthouse Board (“NLB”)** had no objections to the application and recommended that the Applicant issues a notice to mariners prior to commencement of construction or major maintenance activities, clearly stating the safety zone locations and nature of the activities.
- 4.1 The Applicant acknowledged the requirement to issue notice to marines at the start of any offshore activity and confirmed they will highlight activated or planned safety zones within that notice (including any activity if applicable) as per NLB advice.
- 4.2 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the NLB in its response to the application.
5. **Wick Harbour** offered no comments on the Application.
6. **The Cruising Association** noted that the northern part of the wind farm impinges significantly on the route from Wick to Rattray Head and asked for ways to find out what restrictions are in force or planned so that passage can be planned and minimise disruption.
- 6.1 The Applicant advised the Cruising Association that weekly notice of operations and notice to mariners are published on the project website and stated they would be happy for any individual vessel owners to be added to the distribution list if required.
- 6.2 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the Cruising Association.
- 6.3 The Royal Yachting Association (“RYA”) offered no comments on the Application
7. **The Scottish Fishermen’s Federation (“SFF”) and the Scottish White Fish Producers Association (“SWFPA”)** understood the need for safety zones during construction but objected to the application on the basis that there was no visible justification for the ‘worst case scenario’ of ten, 500 metre safety zones within the application. In addition, SFF commented that the fishing space left of 128 metres would not ensure that fishing may continue and sought an outcome where activity does not reach three large vessels with concomitant safety zones closing fishing grounds.
- 7.1 In response to the fishing concerns raised by the SFF and the SWFPA, the Applicant stated that details of construction activities will be promulgated in advance to facilitate passage planning. Marine co-ordination, guard vessels and Fisheries Liaison Officers are utilised to ensure fishing communities are aware of activities on the wind farm site, and where possible, to enable fishing activities to continue. The Applicant clarified and that even with ten active safety zones, passage through the site would not be prevented and that the busiest fishing seasons will be

considered when managing busy installation periods. Ten safety zones would represent the potential peak activity which could be reached and is expected to cover a limited period of time only. Although spacing between adjacent safety zones would be approximately 128 metres, there was no scenario where access to the site could be prevented and the 'worst case scenario' of three large vessels per structure is the maximum number of contractors expected at one structure.

- 7.2 MS-LOT discussed the Applicant's response with the SFF and the SWFPA and established that they were still unclear about the justification for ten safety zones and continued to have concerns about the use of three large vessels with concomitant safety zones.
- 7.3 MS-LOT agreed with the SFF and the SWFPA's concern that three large vessels with concomitant safety zones would not ensure fishing could continue within the wind farm site. MS-LOT proposed to the SFF and the SWFPA that this be limited to no more than two vessels with concomitant safety zones.
- 7.4 The SFF and the SWFPA indicated that they would be in favour of a maximum of two vessels with concomitant safety zones and would require strong justification for the level of ten safety zones before they could reconsider their position.
- 7.5 The Applicant reviewed the number of safety zones requested against the activities triggering a safety zone and identified the safety zones that could be replaced by compliance with COLREGS. The number of safety zones requested decreased from ten to eight during construction.
- 7.6 The SFF and SWFPA responded that they were content with the proposal to reduce the number of safety zones requested from ten to eight and that no more than two out of the eight active safety zones during construction can be established concomitant to each other
- 7.7 MS-LOT is satisfied that the Applicant has fully addressed the points raised by the SFF and SWFPA.