

From: **Redacted**
Marine Scotland Licensing Operations

26 APRIL 2019

Minister for Energy, Connectivity and the Islands

Moray Offshore Windfarm (East) Limited – Safety Zone Application

Purpose

1. To seek your approval of the application for Safety Zones for the Telford Offshore Windfarm, Stevenson Offshore Windfarm and MacColl Offshore Windfarm, collectively referred to as Moray East Offshore Windfarm (“the Application”).

Priority

2. High. Moray East Offshore Wind farm Limited is planning to start construction on 1 May 2019.

Background

3. 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”). 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.
4. The MEOW will comprise of 100 wind turbine generators (“WTGs”) located approximately 12 nautical miles southeast 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.
5. On 27 September 2018 the Applicant submitted the 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 the Application be safety zones for the purpose of securing the safety of individuals

and vessels in the vicinity of the development site during the period of its construction, operation and maintenance.

6. The consultation period ran from 18 October 2018 to 26 November 2018, exceeding the 28 day minimum consultation period set out in the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”) and included a notice of application (“Public Notice”) in local and national newspapers and trade journals. Full details on the consultation process are included at paragraphs 19 to 23 of this submission.
7. Copies of the Application and supporting documentation were also made available to download from the Moray East website and the Marine Scotland website.

Ministerial Powers

8. Applications for safety zones for renewable energy installations are permitted under section 95(2) of the 2004 Act. On 1 April 2017 responsibility for determination of Safety Zone applications within Scottish waters (or an area of waters in a Scottish part of a Renewable Energy Zone) was transferred from the Department for Business, Energy and Industrial Strategy to the Scottish Ministers under section 62 of the Scotland Act 2016.
9. Section 95(2) of the 2004 Act 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.”*

Consideration of Application

10. [The Application](#), as submitted, includes a supporting safety case, an overview of marine traffic survey data presented in the Navigational Risk Assessment , submitted in 2010, and traffic survey data gathered over a further 28 days in 2018. The Application also includes consideration of the impacts of construction, operation and maintenance works and the implementation of any safety zone(s) on other users of the sea.
11. The Applicant is seeking a notice declaring the following safety zones:

During Construction	Mandatory “rolling” 500 metre safety zones around each WTG or OSP and/or their foundations, whilst construction works are in progress, as indicated by the presence of a construction vessel (including Service Operation Vessels (“SOV”) whilst displaying Restricted in their Ability to Manoeuvre (“RAM”) status). Triggering of the safety zones will only include the SOV when it is attached to or on station next to a structure. A maximum of three 500 metre safety zones are allowed to be active at any one time.
	Mandatory pre-commissioning 50 metre safety zones around each WTG or OSP and/or their foundations when construction works have been completed but prior to the commissioning of the development or where construction works have only been partially completed.
During major maintenance	Mandatory 500 metre safety zones around all “major maintenance” work being undertaken. Major maintenance is defined as any activity involving large vessels such as Jack-up Construction Vessels (“JUP”), floating barges and Heavy Lift Vessels (“HLV”) which are RAM. This includes SOVs whilst displaying RAM status. Triggering of the safety zones will only include the SOV when it is attached to or on station next to a structure. A maximum of one 500 metre safety zone is allowed to be active at any one time.

12. The 500 metre safety zones would be implemented on a rolling basis. The rolling basis ensures that safety zones are only “live” for those specific areas of the total site in which activities are taking place – the Applicant has stated that during the construction phase, no more than three safety zones would be in place at any one time, as indicated by the presence of a construction vessel or SOV. Multiple 50 metre pre-commissioning safety zones will be deployed at any one time – up to 103, given that the development will comprise of 100 WTGs and three OSPs. It is expected that no more than one 500 metre major maintenance safety zone will be active at any one time.

13. The Marine Scotland Licensing Operations Team (“MS-LOT”) is satisfied that, due to the high level of marine traffic in the area, it is appropriate to issue a notice specifying a rolling programme of safety zones during the construction, operation and maintenance phases of the project to achieve the objectives set out in section 95(2) of the 2004 Act. The implementation of “rolling safety zones” minimises potential disruption for other marine users, by restricting safety zone implementation to certain circumstances and time-frames and is more proportionate than the implementation of a permanent exclusion zone. MS-LOT believes that the implementation of the safety zones, as described in the

Application and supporting documentation, is proportionate in securing the objectives set out at section 95(2) of the 2004 Act whilst minimising disruption to other marine users.

14. Further detail on vessel management during the construction and operation of the development is included in the combined Vessel Management Plan (“VMP”) and Navigational Safety Plan (“NSP”), prepared to fulfil conditions 15 and 17 respectively of the s.36 consents. The combined VMP and NSP refers to the Application and states how safety zones will be implemented and how these relate to other aspects of marine coordination, such as guard vessels and buoyed construction areas. MS-LOT consulted the Northern Lighthouse Board (“NLB”), the Maritime and Coastguard Agency (“MCA”), Scottish Natural Heritage (“SNH”), Whale and Dolphin Conservation (“WDC”) and Scottish Fishermen's Federation (“SFF”) on the combined VMP and NSP, no objections were raised or comments made regarding the implementation of safety zones at this stage.

Compliance with the Legislation

15. Section 95 of the 2004 Act is implemented in conjunction with Schedule 16 to the Act and in accordance with the following Department for Energy and Climate Change (“DECC”) Guidance, ‘[Applying for safety zones around offshore renewable energy installations](#)’ (November 2011) (“DECC 2011 Guidance”).
16. 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 consent under s.36 of the Electricity Act 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 Statement](#) (2012) which accompanied the application for consents under s.36 of the Electricity Act and the application for marine licences under section 20(1) of the Marine (Scotland) Act 2010 and under section 65(1) of the Marine and Coastal Access Act 2009.
17. Part 3 of Schedule 16 to the 2004 Act sets out the requirements for safety zone applications. Applications are required to describe, by way of a map, the place where the renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned and the waters in relation to which any declaration applied for will establish a safety zone. Applications are also required to describe the other provisions the Applicant asks to be included in the notice applied for and any other information prescribed in Regulations made by the Scottish Ministers. The Application submitted by the Applicant on 27 September 2018 fulfils all requirements of Part 3 of Schedule 16 of the 2004 Act. All other Parts to Schedule 16 place obligations only on the Scottish Ministers.
18. MS-LOT is satisfied that the Application meets the requirements and therefore, the Applicant has complied with all requirements set out in Section 4 of the DECC 2011 Guidance and Part 3 of Schedule 16 to the 2004 Act.

Public Consultation

19. A Public Notice was published and served by the Applicant in accordance with the requirements of the 2007 Regulations, which 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. The Public Notice was published in the Press and Journal, Fishing News, Lloyd's List, the Edinburgh Gazette, Kingfisher Fortnightly Bulletin and the Herald for two successive weeks.
20. The consultation period ran for a period of 39 days, from 18 October 2018 to 26 November 2018, therefore exceeding the 28 day minimum period required under Regulation 6 of the 2007 Regulations.
21. Notices were also issued to the harbour masters of ports likely to be affected by the Application and the relevant sector office of the MCA, with the ports affected requested to display the Public Notice at an address accessible during normal office hours by members of the public likely to be affected by the application (such as public noticeboards) for a period of at least two weeks as per the requirements of the 2007 Regulations.
22. Copies of the Application were also available on the Moray East website and Marine Scotland's website.
23. MS-LOT is, therefore, satisfied that the application was suitably advertised under the terms of the 2004 Act and the 2007 Regulations.

Consultation responses

24. A range of views about the safety zones were requested by the Applicant. Whilst there was 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 and OSPs, a number of consultees raised concerns about aspects of the requested safety zone regime. 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 Notice to Mariners ("NtMs").

Applicant's response – the Applicant confirmed that the use of the safety zones will be promulgated through NtMs should the Application be successful.

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 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 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, and believes that there is no real benefit, based 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 request for safety zones around SOVs displaying RAM status when the SOV is attached to or on station¹ next to a structure is in line with 2007 Regulations 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 regulations. This variation ensured that just SOVs in RAM status that are on 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 safety zone notice on their public notice board.
- v. *The 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.

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, 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).

- vi. *Royal Yachting Association Scotland* agreed with the Application and offered no further comments.
- vii. *The 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 highlighted the need to guard any subsea structures which are not being worked on, noting that this can pose a hazard to commercial fisheries operations, 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 VMP.

Applicant's response – Referring to the Application, 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. This 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 to be informed of the 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. Therefore, MS-LOT is satisfied that these issues have been resolved.

- viii. *SNH* 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 the 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, used by the Applicant for unexploded ordnance surveying, 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 the 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.

25. 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.

Objections

26. Part 4 of Schedule 16 to the 2004 Act includes provisions regarding objections to an application. Part 4(3) prescribes that where objections, or copies of objections, to an application have been sent to the Scottish Ministers in compliance with the regulations, the Scottish Ministers must, “consider those objections, together with all material considerations, with a view to determining whether a public inquiry should be held with respect to the application; and if he thinks it is appropriate to do so, must cause a public inquiry to be held...”.
27. The objections received from the SFF (outlined at Paragraph 25(vii) above) and the MCA with regards to safety zones for SOVs (outlined at Paragraph 25(iii) above) has been considered in detail by both the Applicant and Marine Scotland.
28. 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.

Right of appeal

29. Where the Scottish Ministers reject an application, the Applicant may lodge an appeal with the Scottish Ministers within 28 days of the date of the letter rejecting the Application (as set out in the DECC 2011 Guidance). Any appeals will be considered in consultation with the MCA.
30. Please note, however, that any party to the decision has the right to submit an application for judicial review to the Court of Session. Substantive grounds for challenge under judicial review are illegality, irrationality (or unreasonableness), procedural impropriety and proportionality. European Convention on Human Rights considerations (such as the deprivation of private property) are also relevant grounds.

Options

31. The Scottish Ministers may choose to:
- 1) Approve the application for Safety Zones;
 - 2) Reject the application for Safety Zones;
 - 3) Propose that a Safety Zone notice should be established which is materially different from that applied for; or
 - 4) Call a public inquiry.

Recommendations

32. That you grant the Application for Safety Zones for the MEOW during construction and major maintenance works, noting that a separate application will be made for the decommissioning phase. That you issue a notice, in accordance with the requirements of Section 95(6) of the 2004 Act, declaring 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.

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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
Redacted