

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

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

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

**and**

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

**Morven Offshore Wind Array Project**

**30 November 2023**

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## 1. Introduction

### 1.1 Background

- 1.1.1 On 17 July 2023, the Scottish Ministers received a scoping report (“the Scoping Report”) from Morven Offshore Wind Limited (“the Developer”) as part of its request for a scoping opinion relating to Morven Offshore Wind Array Project (“the Proposed Development”). The Scottish Ministers considered the content of the Scoping Report as sufficient and in accordance with regulation 12 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 EW Regulations”) and Schedule 4 of The Marine Works (Environmental Impact Assessment) Regulations 2007 (“2007 MW Regulations”), collectively referred to as “the EIA Regulations”.
- 1.1.2 This scoping opinion is adopted by the Scottish Ministers under the EIA Regulations (“Scoping Opinion”) in response to the Developer’s request and should be read in conjunction with the Scoping Report. The matters contained in the Scoping Report have been carefully considered by the Scottish Ministers and use has been made of professional judgment, based on expert advice from stakeholders and Marine Directorate (previously known as Marine Scotland) in-house expertise and experience. This Scoping Opinion identifies the scope of impacts to be addressed and the method of assessment to be used in the Environmental Impact Assessment Report (“EIA Report”) for the Proposed Development.
- 1.1.3 The Scottish Ministers, in adopting this Scoping Opinion, have, in accordance with the EIA Regulations, taken into account the information provided by the Developer, in particular, information in respect of the specific characteristics of the Proposed Development, including its location and technical capacity and its likely impact on the environment. In addition, the Scottish Ministers have taken into account the representations made to them in response to the scoping consultation they have undertaken.
- 1.1.4 In examining the EIA Report, and any other environmental information, the Scottish Ministers will seek to reach an up to date reasoned conclusion on the significant effects on the environment from the Proposed Development. This reasoned conclusion will be considered as up to date if the Scottish Ministers are satisfied that current knowledge and methods of assessment have been taken account of. For the avoidance of doubt, this Scoping Opinion does not preclude the Scottish Ministers from requiring the Developer to submit additional information in connection with any EIA Report submitted with an application for consent under section 36 (“s.36 consent”) of The Electricity Act 1989 (“the 1989 Act”) and marine licences under The Marine and Coastal Access Act 2009 (“the 2009 Act”).

- 1.1.5 In the event that the Developer does not submit applications for a s.36 consent under the 1989 Act and marine licences under the 2009 Act for the Proposed Development within 12 months of the date of this Scoping Opinion, the Scottish Ministers strongly recommend that the Developer seeks further advice from them regarding the validity of the Scoping Opinion.
- 1.1.6 The Scottish Ministers advise that as more than one set of environmental impact assessment regulations apply the most stringent requirements must be adhered to in terms of, for example, consultation timelines and public notice requirements.
- 1.1.7 The Developer submitted a Habitats Regulations Appraisal (“HRA”) screening report (“HRA Screening Report”) alongside the Scoping Report in relation to the Proposed Development. The Scottish Ministers response to the HRA Screening Report is contained within the relevant receptor chapters of this Scoping Opinion.

## **2. The Proposed Development**

### **2.1 Introduction**

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

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

2.2.1 The Proposed Development is comprised of an offshore generating station located approximately 60 kilometres ("km") off the Aberdeenshire coast in the North Sea. The Proposed Development will have a capacity of greater than 50 megawatts ("MW") and therefore requires the Scottish Ministers' consent to allow its construction and operation. The Proposed Development will also require a marine licence granted by the Scottish Ministers under the 2009 Act, to permit any and all 'licensable marine activities' carried on for the Proposed Development.

2.2.2 The design envelope for the Proposed Development is broad and there are a number of design parameters which are yet to be determined by the Developer. The technology in relation to the wind turbine generator ("WTG") foundations will consist of fixed substructures. The area of the Proposed Development in which the WTGs, inter-array cables, inter-connector cables, and Offshore Substation Platforms ("OSPs") are located is termed the Array Area and is within the western edge of the ScotWind E1 Plan Option. The Array Area is approximately 860 square kilometres ("km<sup>2</sup>"). Section 6.4 of the Scoping Report defines the "Scoping Boundary" for all receptors as this same area.

2.2.3 The Proposed Development includes the construction and operation of offshore WTGs and all associated OSPs within the Array Area. The key components of the Proposed Development will depend on the final design chosen by the Developer and will include:

- Up to 191 WTGs, all with fixed foundations.
- Maximum blade tip height above Lowest Astronomical Tide ("LAT") = 390 metres ("m")
- Minimum blade tip height above LAT = 30m
- Maximum hub height above LAT = 218m
- Maximum rotor diameter = 350m
- Minimum turbine spacing = 1000m
- Up to 11 OSPs, all with fixed foundations, comprising:

- Up to 8 High Voltage Alternating Current (“HVAC”) collector OSPs, and;
- Up to 3 High Voltage Direct Current (“HVDC”) converter OSPs.
- The HVAC OSPs will have a maximum main structure height above LAT of 70m, a maximum topside length of 80m, and a maximum topside width of 60m.
- The HVDC OSPs will have a maximum main structure height above LAT of 100m, a maximum topside length of 240m, and a maximum topside width of 180m.
- Several foundation types are being considered for the WTGs and OSPs:
  - monopile foundations;
  - gravity base foundations;
  - piled jacket foundations (three or four leg for WTGs; three, four, or six legs for OSPs); or
  - suction bucket jacket foundations (three or four legs for WTGs; three, four, or six legs for OSPs).
- Inter-array cables with a maximum total cable length of 844km.
- Inter-connector cables with a maximum cable length of 751km.
- Inter-array and inter-connector cable protection includes cable burial, as well as external cable protection, such as concrete mattresses and rock placements.

2.2.4 The construction programme for the Proposed Development is yet to be confirmed but will take place within a maximum of seven years and is anticipated to commence in 2026, as detailed in Section 1.3 of the Scoping Report. The operational lifetime of the Proposed Development is yet to be confirmed but will be followed by a period of decommissioning or repowering. Repowering will be subject to the relevant consenting and licensing requirements at that time and is not covered by this Scoping Opinion.

## **2.3 Onshore Planning/Transmission Works**

2.3.1 The Scottish Ministers note that the Scoping Report only describes the offshore array components of the Morven Offshore Wind Farm. The Scottish Ministers have considered the concerns raised in the East Lothian Council representation regarding the appropriateness of considering the offshore array area separate to the offshore transmission infrastructure and onshore works and the intention by the Developer to submit separate scoping reports to assess these elements. The Scottish Ministers understand that due to the ongoing Holistic Network Design Follow-Up Exercise and the potential for third party involvement, the grid connection for the Proposed Development is currently unknown. It therefore may not be possible to submit the onshore EIA, or the EIA for the offshore transmission infrastructure at the same time as the EIA for the Proposed Development. If this is the case, it is essential that sufficient information concerning proposed offshore export cable works and onshore works is included

in the EIA Report for the Proposed Development to understand the cumulative impacts of the Proposed Development. This will ensure as much information as possible relating to the project as a 'whole' is presented.

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

### *Description of the Proposed Development*

- 2.4.1 Section 3 of the Scoping Report states that a conceptual outline design of the Proposed Development has been included in the Scoping Report based on current understanding of the environmental conditions from initial engineering survey work. Although an indicative design envelope has been included in Tables 3.1 to 3.7 of the Scoping Report, the EIA Report must include a full and detailed description of all options considered within the design envelope. Further information on the design envelope approach is set out in sections 2.4.19 to 2.4.22 of the Scoping Opinion below.
- 2.4.2 Section 3.3.2 of the Scoping Report states that the Proposed Development will include up to 191 wind turbines. The Scottish Ministers note that the WTG parameters are detailed in the design envelope in Table 3.1 and advise that the EIA Report must include a full and detailed description of all WTG parameters considered within the design envelope.
- 2.4.3 Section 3.3.3 of the Scoping Report states that the Proposed Development may require up to 11 OSPs and a typical design is detailed in Table 3.2. The final specifications for each OSP will be decided when the final electrical set up for the wind farm is known. The Scottish Ministers advise that the EIA Report must include a full and detailed description of OSP options being considered including the design, size and foundations.
- 2.4.4 Section 3.3.4 of the Scoping Report states that a number of foundations and support structures for wind turbines and OSPs are being considered. The foundation selected will be decided post consent and will be dependant on pre-construction site investigation surveys and on the wind turbine selected. The Scottish Ministers advise that the EIA Report must include a full and detailed description of all foundation and support structure designs considered within the design envelope.
- 2.4.5 The Scoping Report at Section 3.3.5 identifies that boulders are may be present at the site of the Proposed Development. The EIA Report must provide the anticipated estimate of boulder to be cleared (including how much uncertainty may be associated with the figures presented). A clear narrative must be provided in the EIA Report to show how this has been estimated.



- 2.4.6 Section 3.3.6 of the Scoping Report states that scour protection may be used if required to mitigate scour around the wind turbine and OSP foundation structures. For the avoidance of doubt, the use of scour protection must be assessed in the EIA Report including details on materials, quantities, and location.
- 2.4.7 Sections 3.3.7 and 3.3.8 of the Scoping Report set out the maximum design parameters for inter-array and OSP inter-connector cables at Table 3.10 and Table 3.11. Cables will be buried wherever possible with a number of burial options being considered, the final method of which is yet to be determined. Cable protection such as rock placement, rock bags, weighted or anchored mattresses, cable protection systems and/or bend restrictors/stiffeners will be considered where burial is not achievable. The EIA Report must provide an estimate of the anticipated likelihood of suitable burial along cable routes and be clear on the range of depths that have been considered as part of the assessment. Clear narrative must be provided within the EIA Report to show how this has been estimated prior to the further geophysical and geotechnical surveys being undertaken. Where reliance is placed on a subsequent cable plan or cable burial risk assessment as mitigation, the EIA Report must explain how this measure will mitigate the effects, what measures are proposed for inclusion and the effectiveness and degree of confidence that can be placed on such measure. It is recommended that such plans are included alongside the EIA Report.
- 2.4.8 Any cable protection to be used to protect inter-array or inter-connector cables must be assessed in the EIA Report including details on materials, quantities, and location. In addition, any seabed levelling or removal of substances or objects from on or over the seabed, required for the installation of inter-array or inter-connector cables will require consideration in the EIA Report and may also require a marine licence. Should seabed preparation involve dredging, the EIA Report must identify the quantities of dredged material and identify the likely location for deposit. The Developer may also be required to submit pre-dredge sample analysis, this should include supporting characterisation of the new and existing deposit sites.
- 2.4.9 Sections 3.4, 3.5 and 3.6 of the Scoping Report provide an overview of the Proposed Development phases. Table 3.12 states that pre-construction geotechnical and geophysical surveys as well as boulder and unexploded ordnance (“UXO”) surveys will be undertaken. The Scottish Ministers advise that the EIA must describe the environmental effects, including in-combination effects, of the range of surveys which may be required. The Scottish Ministers advise that the EIA Report must include full consideration of the options which will be assessed in relation to UXO clearance, the differences amongst them and an assessment of the environmental effects of these options. In this regard, the Scottish Ministers advise that the EIA Report must include a worst case scenario

of high order detonation in terms of impact and mitigation, unless there is robust supporting evidence that can be presented to show consistent performance of the preferred low order or deflagration method. The Scottish Ministers refer to the Joint SNCB/DEFRA/MS statement – Marine environment: unexploded ordnance clearance<sup>1</sup> in this regard as highlighted in the representation from NatureScot.

- 2.4.10 Section 3.5 of the Scoping Report details the operation and maintenance activities that will be considered in the EIA Report. The Scottish Ministers advise that the EIA Report must provide a full description and consideration of the nature and scope of these activities, including the types of activity, their frequency, how activities will be carried out for the Proposed Development and any anticipated cumulative impacts with neighbouring developments. Such proposed activities may require to be permitted by marine licence issued for the Proposed Development unless an exemption applies.
- 2.4.11 Section 3.6 of the Scoping Report states that the EIA Report will present an overview of the anticipated decommissioning events and an assessment of the potential significant effects of this phase on the relevant receptors. Any uncertainty on the impacts upon receptors from activities during decommissioning should be clearly explained, along with the implications for the assessment of significant effects.
- 2.4.12 The EIA Report must provide the estimate of expected residues and emissions, for example drill cuttings where considered in the design envelope. Specific reference should be made to water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases, where relevant. This information should be provided in a clear and consistent fashion and may be integrated into the relevant aspect assessments.
- 2.4.13 The Scottish Ministers recommend early consideration of nature inclusive design aspects in line with the NatureScot representation. The Scottish Ministers further direct the Developer to the NatureScot representation on the need to understand the potential impacts holistically at a wider ecosystem scale rather than only a set of discrete individual receptor assessments. The Scottish Ministers therefore advise that potential impacts should be considered across key trophic levels, particularly in relation to the availability of prey species. Detailed advice on assessment of across trophic levels is provided in the receptor chapters in Section 5 of the Scoping Opinion.

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<sup>1</sup> <https://www.gov.uk/government/publications/marine-environment-unexploded-ordnance-clearance-joint-interim-position-statement/marine-environment-unexploded-ordnance-clearance-joint-interim-position-statement>

- 2.4.14 Regulatory approvals will be required for licensable activities including all construction activities, whether as part of the original construction or any subsequent alteration or improvement, any deposit on, or removal from on or under the seabed of substances, any dredging and deposit, and any use of explosive substances. Any reference to the 'Proposed Development' in this Scoping Opinion should be taken, as appropriate, to include all activities in connection with the construction, alteration, improvement (including 'change-outs' of components) and decommissioning of the Proposed Development for which a regulatory approval will be needed. The Developer should give consideration to all activities related to the Proposed Development which require regulatory approval and ensure that these are applied for as appropriate.
- 2.4.15 The Scottish Ministers acknowledge the draft stakeholder engagement plan at Appendix 4 of the Scoping Report. While the Scottish Ministers welcome extensive stakeholder engagement, including with other marine users and statutory and non-statutory consultees, engagement should be undertaken directly. MD-LOT would not attend a comprehensive series of pre-set meetings as detailed in Table 4.3 but will engage with the Developer where further engagement has been requested or as required regarding any strategic and guidance updates.
- 2.4.16 In regards to the HRA Screening Report, the Scottish Ministers highlight that the representations provided by consultees should be taken into account in the HRA Report to be submitted alongside the EIA Report. Detailed advice is provided in the receptor chapters in Section 5 of the Scoping Opinion.
- 2.4.17 The Sectoral Marine Plan for Offshore Wind ("the Plan") identified that for E1, where the Development is proposed, further regional-level survey and research work and assessment was required in order to identify and assess potential impacts. The Scottish Ministers acknowledge that the Developer is contributing to regional ornithological surveys to satisfy the requirements of the Plan. Development in this location may require the consideration/submission of a derogation package under the Habitats Regulations with identification of suitable compensation measures as well as evidence of meeting all the required tests. The Developer should continue to liaise with the Marine Directorate on this point going forward.
- 2.4.18 The Plan assessed a potential maximum realistic development for the E1 site of up to 3 GW of generating capacity. The Scottish Ministers note that the Developer is targeting a capacity of approximately 3 GW for the Proposed Development (alongside the additional capacity proposed by other E1 site developers, totalling over 6 GW). The Scottish Ministers are undertaking a reassessment of the Plan, this may identify further impacts and mitigation given the increased capacity proposed at the E1 site in addition to the wider potential for increased cumulative

impacts given the scale of lease option agreements awarded through the ScotWind leasing round. The outcome of this re-assessment and updated Plan will be relevant to decision making.

### *Design Envelope*

- 2.4.19 The Scottish Ministers note the Developer's intention to apply a 'Design Envelope' approach. Where the details of the Proposed Development cannot be defined precisely, the Developer will apply a worst case scenario, as set out in sections 3.2 and 3.3 of the Scoping Report.
- 2.4.20 The Scottish Ministers advise that the Developer must make every attempt to narrow the range of options. Where flexibility in the design envelope is required, this must be defined within the EIA Report and the reasons for requiring such flexibility clearly stated. At the time of application, the parameters of the Proposed Development should not be so wide-ranging as to represent effectively different projects. To address any uncertainty, the EIA Report must consider the potential impacts associated with each of the different scenarios. The criteria for selecting the worst case and the most likely scenario, together with the potential impacts arising from these, must also be described. The parameters of the Proposed Development must be clearly and consistently defined in the application for the s.36 consent and marine licences and the accompanying EIA Report.
- 2.4.21 The Scottish Ministers will determine the applications based on the worst case scenario. The EIA will reduce the degree of design flexibility required and the detail may be further refined in a Construction Method Statement ("CMS") to be submitted to the Scottish Ministers, for their approval, before works commence. Please note however, the information provided in Section 7 below regarding multi-stage consent and regulatory approval. The CMS will 'freeze' the design of the project and will be reviewed by the Scottish Ministers to ensure that the worst case scenario described in the EIA Report is not exceeded.
- 2.4.22 It is a matter for the Developer, in preparing the EIA Report, to consider whether it is possible to robustly assess a range of impacts resulting from a large number of undecided parameters. If the Proposed Development or any associated activities materially change prior to the submission of the EIA Report, the Developer may wish to consider requesting a new scoping opinion.

### *Alternatives*

- 2.4.23 The EIA Regulations require that the EIA Report include 'a description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the Developer, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the

environmental effects'. The Scottish Ministers acknowledge Section 6.5 of the Developer's Scoping Report setting out the consideration of alternatives to date together with the planned activities that are proposed to inform the EIA Report further. The Scottish Ministers advise however that these considerations must include how decommissioning has been taken into account within the design options. The Scottish Ministers advise that this must be based on the presumption of as close to full removal as possible of all infrastructure and assets and should consider the methods and processes of doing so.

- 2.4.24 For the avoidance of doubt, the Scottish Ministers advise that the EIA Report must include an up to date consideration of the reasonable alternatives studied as the parameters of the Proposed Development have been refined. This includes but is not limited to the identification of the potential wind turbine layouts within the array area. The Scottish Ministers expect this to comprise a discrete section in the EIA Report that provides details of the reasonable alternatives studied across all aspects of the Proposed Development and the reasoning for the selection of the chosen option(s), including a comparison of the environmental effects.

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

#### **3.1 Introduction**

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

#### **3.2 EIA Scope**

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

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

3.3.1 The Developer has committed to several mitigation plans including but not limited to a Navigation Safety Plan and Vessel Management Plan, an Environmental Management Plan, a Marine Pollution Contingency Plan, a Marine Mammal Mitigation Protocol, and a Fisheries Management and Mitigation Strategy. A designed in measures and mitigation log, as an appendix to the Scoping Report, summarises the mitigation and monitoring commitments for each receptor. Any embedded mitigation relied upon for the purposes of the assessment should be clearly and accurately explained in detail within the EIA Report. The likely efficacy of the mitigation proposed should be explained with reference to residual effects. The EIA Report must identify and describe any proposed monitoring of significant adverse effects and how the results of such monitoring would be utilised to inform any necessary remedial actions.

3.3.2 The EIA Report should clearly demonstrate how the Developer has had regard to the mitigation hierarchy, including giving consideration to the avoidance of key receptors. The Scottish Ministers advise that where the mitigation is envisaged to form part of a management or mitigation plan, the EIA Report must set out these plans or the reliance on these in sufficient detail so the significance of the residual effect can be assessed and evaluated. This should also include identification of any monitoring and remedial actions (if relevant) in the event that predicted residual effects differ to actual monitored outcomes. Commitment to develop plans without sufficient detail is not considered to be suitable mitigation in itself.

3.3.3 The EIA Report must include a table of mitigation which corresponds with the mitigation identified and discussed within the various chapters of the EIA Report and accounts for the representations and advice attached in Appendix I.

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

## 4. Consultation

### 4.1 The Consultation Process

4.1.1 Following receipt of the Scoping Report, the Scottish Ministers, in accordance with the EIA Regulations, initiated a 28 day consultation process, which commenced on 27 July 2023. The following bodies were consulted, those marked in bold provided a response and those marked in italics sent nil returns or stated they had no comments:

- **Aberdeen City Council**
- **Aberdeenshire Council**
- **Aberdeen International Airport**
- **Angus Council**
- Arbroath Community Council
- Bellrock Offshore Wind Farm (“OWF”)
- **Berwick Bank OWF**
- Berwick Upon Tweed Community Council
- Bowdun OWF
- Broughty Ferry Community Council
- **British Telecom (“BT”)**
- Burntisland Community Council
- Carnoustie Community Council
- Civil Aviation Authority (“CAA”)
- *City of Edinburgh Council*
- Crown Estate Scotland
- Cruise Association
- Communities Inshore Fisheries Alliance
- Dalgety Bay Community Council
- Dee District Salmon Fishery Board (“DSFB”)
- Dundee Airport
- *Dundee City Council*
- **East Lothian Council**
- *Edinburgh Airport*
- Energy Transition Zone Limited
- Esk DSFB
- *Fife Council*
- **Fisheries Management Scotland**
- Fisheries Office - Anstruther
- Fisheries Office – Eyemouth
- Forth DSFB
- **Forth Ports**
- **Historic Environment Scotland (“HES”)**
- Joint Radio Company
- Kingsbarns Community Council
- Marine Safety Forum
- **Maritime and Coastguard Agency (“MCA”)**



- Ministry of Defence – Defence Infrastructure Organisation (“MOD”)
- Montrose Port
- **National Air Traffic Services (“NATS”)**
- National Trust for Scotland
- **NatureScot**
- **Natural England**
- North and East Coast Regional Inshore Fisheries Group
- North Berwick Community Council
- North Sea Transition Authority
- *Northern Lighthouse Board (“NLB”)*
- *Northumberland County Council*
- Oil and Gas UK
- Ossian OWF
- Planning (Scottish Government)
- Prestonpans Community Council
- Receiver of Wreck
- River Tweed DFSB
- *Royal Yachting Association Scotland*
- **Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)**
- **Scottish & Southern Electricity Network (“SSEN”) Transmission**
- *Scottish Borders Council*
- Scottish Canoe Association
- Scottish Creel Fishermen's Federation
- Scottish Enterprise
- *Scottish Environment Protection Agency*
- **Scottish Fishermen’s Federation (“SFF”)**
- Scottish Fishermen's Organisation
- Scottish Surfing Federation
- **Scottish Water**
- Scottish White Fish Producer's Association
- Scottish Wildlife Trust
- Seagreen and Seagreen 1A OWF
- Sport Scotland
- Surfers Against Sewage
- Tay DSFB
- Tranent & Elphinostone Community Council
- **UK Chamber of Shipping**
- *UK Hydrographic Office*
- Visit Scotland
- Whale and Dolphin Conservation

4.1.2 Specific advice was sought from Marine Directorate – Science, Evidence, Digital and Data (“MD-SEDD”), the Marine Directorate – Marine Analytical Unit (“MAU”) and Transport Scotland, including Ports and Harbours.

## 4.2 Responses received

- 4.2.1 From the list above a total of 29 responses were received. Advice was also provided by MD-SEDD, MAU and Transport Scotland. The purpose of the consultation was to seek representations to aid the Scottish Ministers' consideration of which potential effects should be scoped in or out of the EIA Report.
- 4.2.2 The Scottish Ministers are satisfied that the requirements for consultation have been met in accordance with the EIA Regulations. The sections below highlight issues which are of particular importance with regards to the EIA Report and the s.36 consent and marine licence applications. The representations and advice received are attached in Appendix I and each must be read in full for detailed requirements from individual consultees.

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

### **5.1 Introduction**

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

### **5.2 Physical Processes**

5.2.1 The Scottish Ministers are broadly content with the study area defined in Section 7.1.2 of the Scoping Report and the data sources, as outlined in Section 7.1.3 of the Scoping Report, and welcome the Developer's commitment to include further datasets and reports within the EIA Report. With regards to the baseline, the Scottish Ministers draw the developer's attention to the MD-SEDD advice that the baseline water column conditions should be described in the EIA Report and advise that this must be fully addressed and implemented in the EIA Report.

5.2.2 Table 7.3 of the Scoping Report presents the impacts the Developer proposes to scope in and out of assessment for physical processes. The Scottish Ministers broadly agree with the impacts scoped in and out, however agree with the NatureScot representation that impacts from scour around seabed infrastructure should be scoped in to the EIA Report due to the potential for secondary scour to occur around scour protection. The Scottish Minister further advise that the potential changes to water column structure including timing and extent of seasonal stratification, and potential impacts on productivity and high trophic levels, should be assessed within the EIA Report, in line with the MD-SEDD advice.

5.2.3 The Scottish Ministers are broadly content with the proposed approach to assessment, as outlined in section 7.1.8 of the Scoping Report. In addition, a qualitative assessment should be undertaken on the impacts of the Proposed Development on water column mixing. If there are uncertainties as to how the wind farm may change stratification then 3D hydrodynamic modelling may be required. The MD-SEDD advice on this matter must be fully addressed and implemented in the EIA Report.

5.2.4 With regards to mitigation and monitoring, the Scottish Ministers advise that the full range of mitigation measures, published guidance, and monitoring requirements are discussed in the EIA Report. This is in line with the representation from NatureScot.

- 5.2.5 The Developer has stated in Section 7.1.9 of the Scoping Report that, in the absence of modelling, it is unclear whether the predicted impacts to physical processes will be localised within the Scoping Boundary during all phases of the Proposed Development. The Scottish Ministers advise that potential cumulative impacts must be fully assessed for each phase of the Proposed Development in the EIA Report once modelling outputs are available. This view is in line with the NatureScot representation.
- 5.2.6 The potential for transboundary impacts has been considered in Section 7.1.11 and a detailed screening presented in Appendix 1: Transboundary Screening. The Scottish Ministers agree that transboundary impacts can be scoped out of further consideration in the EIA Report for this receptor, as supported by the NatureScot representation.
- 5.2.7 With regards to the Marine Protected Area (“MPA”) screening considered within Appendix 6 of the Scoping Report, the Scottish Ministers advise that, in line with the NatureScot representation, it is acceptable to screen out the two physical (geomorphological and large scale) features.

### **5.3 Underwater Sound**

- 5.3.1 The underwater sound study area is defined by the fish and shellfish ecology, marine mammals, and commercial fisheries receptors and therefore no separate underwater sound study area has been defined by the Developer. The Scottish Ministers are content with this approach. A summary of data sources likely to be used for underwater sound modelling is outlined in Table 7.5 of the Scoping Report. The Scottish Ministers are broadly content with the list presented.
- 5.3.2 Table 7.7 of the Scoping Report presents the impacts the Developer intends to scope in and out of assessment for different phases of the Proposed Development for underwater sound. The Scottish Ministers broadly agree with the impacts scoped in and out.
- 5.3.3 With regards to the approach to assessment, the Scottish Ministers advise that, in line with the NatureScot representation, all geophysical equipment should be treated as producing impulsive sound as a precautionary measure and geophysical surveys should be considered as a standalone impact, as detailed in the MD-SEDD representation. The Scottish Ministers also highlight the impending publications on the efficacy of certain modelling techniques as noted in the MD-SEDD advice.
- 5.3.4 In terms of mitigation and monitoring, the Scottish Ministers highlight the MD-SEDD advice regarding the use of both passive acoustic monitoring and marine mammal observers. Additionally, MD-SEDD advises the concurrent broadband sound monitoring should be used to establish a base of the estimated levels for

future phases of the Proposed Development. The Scottish Ministers advise that the MD-SEDD advice on mitigation and monitoring must be fully considered in the EIA Report.

5.3.5 In Section 7.2.9 of the Scoping Report, the Developer proposes to give consideration to the potential for cumulative effects on relevant receptors due to underwater sound in the respective topic sections of the EIA Report. The Scottish Ministers are content with this approach.

5.3.6 The potential for transboundary impacts has been considered in Section 7.2.10 and a detailed screening presented in Appendix 1: Transboundary Screening. Transboundary impacts affecting specific receptor groups are considered separately by the Developer and the Scottish Ministers are content with this approach.

#### **5.4 Offshore Water Quality**

5.4.1 The offshore water quality study area is defined in Section 7.3.2 of the Scoping Report as incorporating the Scoping Boundary plus a tidal Zone of Influence (“Zol”) buffer defined from desktop sources. This included the Zol for the maximum extent of indirect impacts to benthic subtidal receptors, fish and shellfish ecology and MPA receptors from increased in suspended sediment concentrations and deposition. A summary of key desktop datasets and reports is provided by the Developer in Table 7.9 of the Scoping Report.

5.4.2 The Developer has proposed to scope out all potential water quality impacts from the EIA Report and Table 7.10 details the justification for this approach. Due to the remote offshore location of the Proposed Development, no cumulative or transboundary effects on offshore water quality have been identified by the Developer. The Scottish Ministers are content with the Developer’s proposal to scope offshore water quality out of the EIA Report on the basis of the impacts of increased suspended sediment concentration, invasive non-native species and deterioration of water quality being considered under specific receptor topics.

#### **5.5 Benthic Subtidal Ecology**

5.5.1 Section 8.1.2 presents the two study areas defined for benthic subtidal ecology: the Benthic Subtidal Ecology Study Area and the Regional Benthic Subtidal Ecology Study Area. The Scottish Ministers are broadly content with both of the study areas presented by the Developer. However, the Scottish Ministers draw attention to the representation by Natural England which advises consideration of the Farnes East Marine Conservation Zone (“MCZ”), the North East of Farnes Deep MCZ and Highly Protected Marine Area and Swallow Sand MCZ. The

Scottish Ministers request that the Natural England representation is fully considered by the Developer in the EIA Report.

- 5.5.2 The Scottish Ministers are broadly content with the baseline characterisation in Section 8.1.5 of the Scoping Report, and the data sources presented in Section 8.1.3.
- 5.5.3 Table 8.4 of the Scoping Report outlines the impacts proposed to be scoped in to assessment for benthic subtidal ecology in the EIA Report during different phases of the Proposed Development, while Table 8.5 presents the impacts proposed to be scoped out. The Scottish Ministers agree with the impacts scoped in and out of assessment, in line with the NatureScot representation, however advise that consideration be given to the representation from the SFF regarding the impacts to benthic invertebrates due to thermal emissions from subsea electrical cables. The Scottish Ministers are content with the approach to assessment as outlined in section 8.1.9 of the Scoping Report.
- 5.5.4 With regards to mitigation, the Scottish Ministers are broadly content with the designed in measures and mitigation described in Section 8.1.7, however advise that the full range of mitigation measures and published guidance is considered and discussed in the EIA Report. The Scoping Report does not mention any specific monitoring for benthic subtidal ecology and the Scottish Ministers advise that proposals for monitoring must be discussed in the EIA Report. This view is in line with the NatureScot representation.
- 5.5.5 The Scottish Ministers are content with the approach to cumulative assessment for benthic interests as described in Section 8.1.9 and agree that transboundary impacts can be scoped out from further assessment.
- 5.5.6 In regard to the screening for nature conservation MPAs (“ncMPAs”), the Developer proposes to screen in the ‘offshore subtidal sands and gravels’ and ‘ocean quahog aggregations’ features due to potential impacts from increased suspended sediment concentrations and associated depositions and changes in physical processes as they overlap with the zone of influence. In line with the NatureScot representation, the Scottish Ministers are content with this approach.
- 5.5.7 The Scottish Ministers agree with the conclusion of the HRA Screening Report that no sites with Annex 1 habitat features need to be taken forward for assessment. This view is in line with the NatureScot representation.

## **5.6 Fish and Shellfish Ecology**

- 5.6.1 Section 8.2.2 of the Scoping Report presents the two study areas defined for fish and shellfish ecology: the Array Project Fish and Shellfish Ecology Study Area

and the Regional Fish and Shellfish Ecology Study Area. The Scottish Ministers are broadly content with both of the study areas presented by the Developer and the Developer's proposal to consider ocean quahog and horse mussels within the benthic ecology chapter of the EIA Report; this view is supported by NatureScot. However, the Scottish Ministers highlight the representation from Fisheries Management Scotland recommending that the River Deveron, River Ugie, River Ythan and River Don are fully considered in the assessment process. The Scottish Ministers request that the Developer considers the Fisheries Management Scotland representation when compiling the EIA Report.

- 5.6.2 With regards to baseline characterisation, as detailed by the Developer in Section 8.2.3 and 8.2.5 of the Scoping Report, the Scottish Ministers advise that more detail on the eDNA methodology should be provided prior to commencement of surveys, in line with the NatureScot representation. The Scottish Ministers are content that the majority of relevant data sources have been identified to characterise the baseline however advise the Developer to include the additional data sources highlighted in the NatureScot representation.
- 5.6.3 Table 8.12 presents the impacts the Developer proposes to scope in to the assessment in the EIA Report for different phases of the Proposed Development, while Table 8.13 presents the impacts proposed to be scoped out. The Scottish Ministers are broadly content with the impacts scoped in and out; however advise that the NatureScot representation as regards underwater noise and vibration, EMF impacts and changes in prey species availability must be fully implemented in the EIA Report. In addition, the Scottish Ministers advise that the SFF and Fisheries Management Scotland representations are given full consideration.
- 5.6.4 With regards to changes in prey species availability, consideration must be given in the EIA Report to ensure that impacts to key prey species and their habitats are considered for the Proposed Development and cumulatively with other offshore wind farm developments. The Scottish Ministers direct the Developer to NatureScot's advice in this regard and advise that this must be fully addressed and implemented in the EIA Report.
- 5.6.5 In terms of the approach to assessment set out in Section 8.2.8 of the Scoping Report, the Scottish Ministers are broadly content, however advise that assessment should quantify where possible the likely impacts to key Priority Marine Features ("PMFs") and consider whether this could lead to a significant impact on the national status of the PMFs under consideration, and that the additional guidance identified by NatureScot regarding underwater noise and UXO clearance should be included.
- 5.6.6 The Scottish Ministers are largely content with the embedded mitigation commitments outlined in Section 8.2.7 of the Scoping Report, alongside the

commitment for additional mitigation measures if required, and advise that the full range of mitigation measures and published guidance is considered and discussed in the EIA Report. With regards to invasive and non-native species (“INNS”), the EIA Report must provide details on how marine INNS will be considered, monitored, and recorded and how they are taken account of within biosecurity plans for each phase of the Proposed Development. Additionally, the Scottish Ministers advise that further information on proposed monitoring for fish and shellfish receptors must be discussed in the EIA Report and advise the Developer to engage directly with NatureScot in this regard.

- 5.6.7 With respect to cumulative impacts, the Scottish Ministers advise that the EIA Report must consider the cumulative effects of key impacts such as habitat change or loss, particularly in relation to diadromous fish as well as key fish and shellfish species that contribute ecological importance as a prey resource, as detailed in the NatureScot representation.
- 5.6.8 The Developer considers potential transboundary impacts in Section 8.2.11 and Appendix 1 of the Scoping Report. The Scottish Ministers agree with the conclusions of the Developer’s screening assessment, in line with the NatureScot representation.
- 5.6.9 With regards to the HRA Screening Report, the Scottish Ministers agree with NatureScot’s view that migratory fish should currently be assessed through the EIA process and not through the HRA process. However, the Developer should continue to engage with the Scottish Ministers and NatureScot regarding any change in how diadromous fish should be assessed through EIA and HRA as a result of ongoing research in this area.

## **5.7 Marine Mammals**

- 5.7.1 The Developer presents two study areas with regards to marine mammals in Section 8.3.2 of the Scoping Report: the Project Marine Mammal Study Area, and the Regional Marine Mammal Study Area. The Developer has also identified relevant regional marine mammal management units and SCANS survey block area. The Scottish Ministers are broadly content with the study areas presented. This view is supported by the NatureScot representation.
- 5.7.2 The Scottish Ministers are largely content with the data sources presented in Section 8.3.3 and Table 7.2 of Appendix 7 of the Scoping Report.
- 5.7.3 With regards to baseline characterisation, the Scottish Ministers are content with the proposed approach to inclusion of the bottlenose dolphin in quantitative assessment described in Section 8.3.5.35 of the Scoping Report. However, the Scottish Ministers advise that potential impacts on the Moray Firth SAC



bottlenose dolphin population from vessels travelling from ports within the Moray Firth or along the east coast should be given consideration. The Scottish Ministers direct the Developer to the NatureScot representation on this point and advise that it must be fully implemented.

- 5.7.4 In terms of harbour seal, the Scottish Ministers are content with the approach presented in paragraph 8.3.5.46 as the seal usage maps indicate low usage of the area for the Proposed Development with harbour seals. In regards to key species for further assessment, the Scottish Ministers are content that paragraph 8.3.5.57 correctly identifies these. In line with NatureScot's view, the Scottish Ministers agree that the rare or occasional species listed do not need to be assessed further, however advise that all of the species listed in Section 8.3.5 of the Scoping Report are included in any proposed mitigation programme.
- 5.7.5 The Developer presents impacts proposed to be scoped in to assessment in the EIA Report during different phases of the Proposed Development in Table 8.19, while the impacts proposed to be scoped out are presented in Table 8.20. The Scottish Ministers broadly agree with the proposal, however advise that potential impacts on the Moray Firth SAC bottlenose dolphin population, as described in paragraph 5.7.3 of the Scoping Opinion, should be specifically considered in the EIA Report.
- 5.7.6 The Scottish Ministers are broadly content with the approach to assessment; however, advise against apportioning unidentified marine mammal sightings during Digital Aerial Surveys ("DAS") based on the proportion of identified species, to prevent biases in the data. The advice from NatureScot in this regard must be fully addressed in the EIA Report.
- 5.7.7 The Scottish Ministers have reviewed the mitigation measures detailed in Section 8.3.7 of the Scoping Report and advise that, where impact pathways have been identified, the full range of mitigation measures and published guidance must be included in the EIA Report along with further information on proposed marine mammal monitoring. This view is in line with the NatureScot representation.
- 5.7.8 The Scottish Ministers are broadly content with the approach to the assessment of cumulative effects proposed by the Developer in Section 8.3.9, although highlight the NatureScot consideration that this is quite high level. The Scottish Ministers support the Developer proposal to utilise the Cumulative Effects Framework if this is available at the time of assessment.
- 5.7.9 In line with the NatureScot representation, the Scottish Ministers agree with the approach to assessing transboundary effects outlined in Section 8.3.11 of the Scoping Report and agree that transboundary impacts should be considered in

the EIA Report. Additionally, the Scottish Ministers agree that no ncMPAs need to be screened in to the MPA assessment.

- 5.7.10 With regards to HRA Screening, in line with the NatureScot representation the Scottish Ministers advise that that the Moray Firth SAC should remain screened in to the assessment in respect of bottlenose dolphin until underwater noise modelling is completed and that potential impacts from vessels travelling from ports within the Moray Firth or along the east coast should be given consideration. The Scottish Ministers agree that the Berwickshire and North Northumberland Coast and Isle of May SACs for grey seals and the Firth of Tay and Eden Estuary SAC for harbour seals can be screened out for further assessment. The Southern North Sea SAC should remain screened in for further assessment in line with the representation from Natural England.

## **5.8 Offshore Ornithology**

- 5.8.1 The Scottish Ministers are broadly content with the study areas presented in Section 8.4.2 of the Scoping Report and advise, in line with the NatureScot representation, that species foraging ranges must be considered when identifying the wider study area necessary for a particular seabird species in the breeding season.
- 5.8.2 A range of data sources are presented by the Developer in Section 8.4.3: both site-specific surveys and desk-based literature. The Scottish Ministers are largely content with the data sources presented, but highlight the NatureScot representation with regards to additional survey results that may provide useful contextual data. In regards to the digital aerial survey campaign, the Scottish Ministers advise that the presence of sensitive species should be confirmed on completion of two full years of survey and that the advice from NatureScot regarding survey coverage analysis and availability bias is fully considered and implemented in the EIA Report. Additionally, the Scottish Ministers highlight RSPB Scotland's representation regarding representation of birds with crepuscular and nocturnal flight tendencies and request that the Developer considers this when compiling the EIA Report.
- 5.8.3 The Developer presents the impacts proposed to be scoped in for assessment in the EIA Report during different phases of the Proposed Development in Table 8.25 of the Scoping Report, while impacts proposed to be scoped out are outlined in Table 8.26. The Scottish Ministers broadly agree with the impacts proposed to be scoped in and out of the EIA Report, in line with the Natural England and NatureScot representations. However, the Scottish Ministers advise that the NatureScot representation regarding changes in prey availability and potential impacts on prey species and their habitats are fully considered and implemented in the EIA Report. Clear links between the benthic and the fish and shellfish

assessments in relation to potential impacts on birds should be made within the ornithology assessment in the EIA Report as recommended in the NatureScot representation.

- 5.8.4 With regards to the approach to assessment described in Appendix 9 to the Scoping Report, the Scottish Ministers advise that the NatureScot representation regarding abundance data, seasonality, collision risk modelling, displacement and mortality rates, apportioning, and population viability analysis must be fully implemented by the Developer. Additionally, the Scottish Ministers advise that any evidence sources presented to support additional, alternative displacement assessment which is not in line with current guidance, should be justified with evidence derived from relevant studies that have been peer reviewed and formally ratified. For completeness, the Scottish Ministers highlight the NatureScot representation regarding the update to NatureScot Marine Ornithology Guidance Note 11 on population viability analysis, which should be considered when compiling the EIA Report.
- 5.8.5 The Natural England ornithology advice differs in some respects from the NatureScot advice as detailed in the Natural England representation. The Scottish Ministers do not expect the Developer to carry out two separate offshore ornithological assessments and expect that the NatureScot guidance is followed, although the Scottish Ministers highlight the Natural England advice that there may be instances where a different assessment is needed to be able to adequately assess in-combination effects on English seabirds. Any differences in approaches between Natural England and NatureScot should be acknowledged when compiling the EIA Report.
- 5.8.6 The Scottish Ministers highlight the RSPB Scotland representation in regards to bio-seasons for kittiwakes and gannets, foraging ranges for common guillemot and razorbill, avoidance and displacement rates for gannets and displacement and barrier effects. While the Scottish Ministers advise that the RSPB Scotland representation should be fully considered when compiling the EIA Report, for the avoidance of doubt, where there are differences in advice, the Scottish Ministers expect that the NatureScot guidance is followed in relation to the assessment approach.
- 5.8.7 In terms of mitigation and monitoring, the Scottish Ministers are broadly content with the designed in measures presented by the Developer in Table 8.27 of the Scoping Report and in Appendix 2. With regards to the Developer's commitment to appropriately light and mark the WTGs and OSPs, the Scottish Ministers request that NatureScot representation regarding lighting and the potential effects on nocturnal species, and the effects of 24 hour construction activities on ornithological receptors is fully considered in the EIA Report.

- 5.8.8 The Scottish Ministers are content with the approach to potential cumulative impacts outlined in Section 8.4.9 of the Scoping Report and support the use of the Cumulative Effects Framework tool if this is available for use when the Developer is compiling the EIA Report. The Scottish Ministers also agree with Appendix 1 of the Scoping Report which concludes that transboundary impacts on offshore ornithology should be scoped in to the EIA Report. The Scottish Ministers views on these aspects are supported by the NatureScot representation.
- 5.8.9 With regards to the ncMPA screening, the Scottish Ministers advise that, in line with the NatureScot representation, the Proposed Development is not capable of affecting (other than insignificantly) ornithological features of any ncMPAs.
- 5.8.10 With regards to the HRA Screening Report, the Scottish Ministers advise that the Developer should make it clear that the “indirect temporary habitat loss/disturbance” impact pathway, refers to prey availability. The Scottish Ministers additionally advise that no conclusions should be drawn for likely significant effect (“LSE”) until all the data from the site-specific survey work is available. These views are supported by the NatureScot representation.
- 5.8.11 In terms of LSE pathways, the Scottish Ministers advise that the potential impact of “attraction to light” should be screened in for the construction phase of the Proposed Development, as described in the NatureScot representation. In Table 5.16 of the HRA Screening Report, the Developer presents an LSE matrix for Special Protection Areas (“SPAs”) in UK waters with marine ornithological features. The Scottish Ministers draw the Developer’s attention to the NatureScot representation and advise that the concerns raised with regards to the LSE matrix, specifically vulnerability of species to impacts associated with offshore wind farms, abundance of species at the Scoping Boundary (breeding season) and the site-specific foraging range data in respect of gannet, are fully considered and addressed in the Report to Inform Appropriate Assessment.
- 5.8.12 With regards to breeding seabirds in the non-breeding season, in line with the NatureScot representation, the Scottish Ministers advise that the abundance of each species should be re-assessed when the two years of data captured during digital aerial surveys is available and has been analysed. Additionally, the Scottish Ministers advise that the Developer undertake assessment on migratory waterbird species as described in the NatureScot representation.
- 5.8.13 The Scottish Ministers also advise that, in line with the Natural England representation, the Farne Islands SPA and Flamborough and Filey Coast SPA should be screened in for impacts to guillemot during the non-breeding season. The Scottish Ministers advise that this is assessed both using NatureScot’s recommended approach and also using the traditional approach of apportioning

birds as detailed in the Natural England representation. In terms of apportioning and assessment of LSE for guillemot and razorbill from English SPAs, including Farne Islands SPA and Flamborough and Filey Coast SPA, the Scottish Ministers advise that the Developer considers the Natural England representation in regards to this matter.

## **5.9 Commercial Fisheries**

- 5.9.1 The Scottish Ministers are content with the study area for commercial fisheries outlined by the Developer in Section 9.2.1 of the Scoping Report. The Scottish Ministers are also broadly content with the data sources presented in Section 9.1.3 of the Scoping Report, however, in line with the MD-SEDD advice, advise that the Marine Management Organisation Vessel Monitoring Systems dataset should also be used to produce figures presenting the fishing effort for vessels, which will provide further information about the commercial fisheries baseline to assess possible displacement of fishing effort. Additionally, the Scottish Ministers direct the Developer to the MD-SEDD advice regarding the use of heat maps for vessels under 12 meters and advise these are used to further inform the baseline characterisation.
- 5.9.2 The Developer presents the impacts proposed to be scoped in to assessment during different phases of the Proposed Development in Table 9.4 of the Scoping Report. The Scottish Ministers agree with the impacts scoped in to the EIA Report.
- 5.9.3 With regards to approach to assessment, for the avoidance of doubt, the Scottish Ministers advise that the Developer undertakes a fisheries displacement assessment in line with the Xodus 2022 “Good practice guidance for assessing fisheries displacement by other licensed marine activities” as per the MD-SEDD advice. The Scottish Ministers advise that the Developer must adopt a clear position on whether it will be content for fishing to continue over the Proposed Development after construction is complete and whether overtrawl trials will be included as a mitigation measure. This position must be adopted prior to the fisheries displacement assessment so the implications from this can be included in the assessment.
- 5.9.4 With regards to mitigation and monitoring, the Scottish Ministers advise that the SFF representation must be fully considered by the Developer. The Scottish Ministers advise that in identifying appropriate mitigation measures, the Developer must consider the different types of fishing that take place within the Proposed Development and engage with the wider fishing industry to seek broad agreement on measures proposed. The Scottish Ministers advise that when detailing the mitigation measures the Developer must clearly state commitments and explain any caveats to these commitments, such as EIA significance, so that

stakeholders can easily understand the actual commitment(s) made. The Scottish Ministers also direct the Developer to the SFF representation and the MD-SEDD advice with regards to design aspects of the Proposed Development and advise that these must be fully considered when finalising the design parameters for the Proposed Development.

- 5.9.5 With regards to the approach to cumulative effects assessment, as outlined in Section 9.1.9 of the Scoping Report, the Scottish Ministers advise that this takes into account other wind farm areas, in particular floating wind farms where some types of fishing may be restricted and also any MPAs and other protected areas with fisheries management measures in place, in line with the MD-SEDD advice.
- 5.9.6 The Scottish Ministers welcome the engagement with fisheries representatives that has been undertaken so far and recommend that early engagement with fisheries representatives is continued as outlined in the SFF representation. The Scottish Ministers strongly recommend consultation with fishing industry while finalising design parameters for the Proposed Development.

## **5.10 Shipping and Navigation**

- 5.10.1 The Scottish Ministers are content with the study area presented by the Developer in Section 9.2.2 of the Scoping Report. With regards to baseline characterisation, the Scottish Ministers are content with the data sources presented in Table 9.6, however highlight the representation from the MCA regarding vessel traffic surveys and advise that this must be fully addressed in the EIA Report, with surveys carried out to MGN 654 standard. Additionally, the Scottish Ministers highlight the representation by the UK Chamber of Shipping with regards to additional effort to identify cruise traffic and request that the Developer fully considers this in the EIA Report.
- 5.10.2 The Developer presents the impacts proposed to be scoped in to assessment during different phases of the Proposed Development in Table 9.8 of the EIA Report. The Scottish Ministers agree with the impacts scoped in to the EIA Report, however, for the avoidance of doubt, the Developer must ensure that each of the possible impacts on navigational issues for outlined in the MCA representation is addressed within the EIA Report for both commercial and recreational craft. Additionally, the Scottish Ministers highlight the representation from the UK Chamber of Shipping regarding the exclusion of temporary vessel traffic and requests that the Developer considers this advice when compiling the EIA Report.
- 5.10.1 With regards to the approach to assessment, the Scottish Ministers confirm that, in line with the MCA representation, the Developer will be required to submit a Navigational Risk Assessment in line with MGN 654, accompanied by a detailed

MGN 654 checklist. Hydrographic surveys should fulfil the requirements of MGN 654 Annex 4.

- 5.10.2 The Scottish Ministers also draw the Developer's attention to the MCA representation with regards to search and rescue ("SAR") Emergency Response Co-operation Plans, levels of radar surveillance, AIS and shore-based VHF radio coverage. The Scottish Ministers advise that the MCA representation must be fully addressed within the EIA Report and that a SAR checklist must be completed by the Developer in consultation with the MCA.
- 5.10.3 With regards to cabling routes and cable burial, the Scottish Ministers advise that a Burial Protection Index should be completed and, subject to the traffic volumes, an anchor penetration study may be necessary. The Scottish Ministers advise that this should be fully addressed in the EIA Report and highlight the MCA advice on a maximum 5% reduction in surrounding depth referenced to Chart Datum if cable protection measures are required. Additionally, the Scottish Ministers direct the Developer to the MCA representation regarding consideration of electromagnetic deviation on ships' compasses and the requirement for a compass deviation study should HVDC installation be considered. The MCA advice in this respect must be fully addressed and implemented in the EIA Report in so far as it relates to the Proposed Development.
- 5.10.4 In terms of potential cumulative effects outlined in Section 9.2.9 of the Scoping Report, the Scottish Ministers are largely content with the proposed approach and highlight the MCA requirement for an appropriate assessment of the distances between the neighbouring offshore renewable project boundaries and shipping routes in line with MGN Standard 654 And that this should consider the proximity to other windfarm developments, other infrastructure, and the impact on safe navigable sea room. The MCA requirements must be fully addressed in the EIA Report.

## **5.11 Aviation (Military and Civil)**

- 5.11.1 The Developer presents the impacts to aviation proposed to be scoped in to and out of the assessment in the EIA Report during the different phases of the Proposed Development in Tables 9.12 and 9.13 respectively. The Scottish Ministers are broadly content with the impacts proposed to be scoped in and out, however highlight the representation by Aberdeen International Airport and advise that impacts on the instrument flight procedure area must be scoped into the EIA Report.
- 5.11.2 The Scottish Ministers also draw the Developer's attention to the representation from NATS which predicts that the Proposed Development is likely to generate false primary plots and also a reduction in the probability of Perwinnes RADAR

and Alanshill RADAR to detect real aircraft. NATS has additionally advised that the Proposed Development will likely have unacceptable impacts to Prestwick Centre Air Traffic Control (“ATC”), Aberdeen ATC and Military ATC. This view is supported in the representation from Aberdeen International Airport. The Scottish Ministers therefore recommend that the Developer engages with NATS on these points and advise that these impacts must be assessed, and appropriate mitigation proposed, in the EIA Report.

- 5.11.3 The Scottish Ministers are unable to provide advice regarding military aviation as representation from the MOD has not been received. The Scottish Ministers therefore advise the Developer to engage with the MOD directly prior to submission of the EIA Report to determine the acceptability of the approach proposed in the Scoping Report.

## **5.12 Marine Archaeology**

- 5.12.1 The Scottish Ministers broadly agree with the the study area for marine archaeology outlined in Section 9.4.2 of the Scoping Report, however advise that further information and assessment is required to inform the baseline presented in Section 9.4.3. This view is supported in the representation from HES.

- 5.12.2 In line with the representation from HES, the Scottish Ministers advise that the potential impacts to marine archaeology as presented by the Developer in Table 9.15 of the Scoping Report should not be scoped out of assessment in the EIA Report at this stage. The Scottish Ministers advise that further archaeological assessment is required and impacts must be scoped in to the assessment in the EIA Report, unless HES provides written agreement that these can be scoped out prior to submission.

- 5.12.3 The Scottish Ministers note and agree with the representation from HES, which highlights that further evidence is required to support the justification for the suitability of proposed measures to mitigate potential effects on the marine archaeological receptors from the Proposed Development.

- 5.12.4 As regards cumulative assessment, the Scottish Ministers advise, as in paragraph 5.12.2 of the Scoping Opinion, that it is premature to scope out cumulative impacts and inter-related effects and that these must be scoped in to the EIA Report unless HES provides written agreement that these can be scoped out prior to submission.

## **5.13 Other Sea Users, Marine Infrastructure and Communications**

- 5.13.1 The Developer outlines two study areas in Section 9.5.2 of the Scoping Report: the Regional Other Sea Users and Marine Infrastructure Study Area and the Local Other Sea Users and Marine Infrastructure Study Area. The Scottish



Ministers are broadly content with both proposed study areas and also the data sources presented in Section 9.5.3 of the Scoping Report.

- 5.13.2 Table 9.18 of the Scoping Report presents the impacts the Developer proposes to scope in to the assessment in the EIA Report during the different phases of the Proposed Development, while impacts proposed to be scoped out are outlined in Table 9.19. The Scottish Ministers are broadly content with the impacts scoped in and out for assessment in the EIA Report.
- 5.13.3 The Scottish Ministers note the representation from SSEN Transmission which outlines nearby licensed and future subsea transmission infrastructure. The Scottish Ministers request that the Developer fully considers the SSEN Transmission representation and its nearby transmission infrastructure in the EIA Report.
- 5.13.4 For completeness, the Scottish Ministers draw the Developer's attention to the representation from BT regarding minimum clearance from any structure to the radio link path. The Scottish Ministers request that the representation from BT is fully considered in the EIA Report in so far as it relates to the Proposed Development.
- 5.13.5 The Scottish Ministers emphasise the importance of engaging with other marine users, including developers of ScotWind and INTOG projects, during all phases of the Proposed Development.

#### **5.14 Socio-economics**

- 5.14.1 The Scottish Ministers are broadly content with the study areas as detailed in paragraph 9.6.2.3 of the Scoping Report, although advise consideration of the representation from Forth Ports should the Port of Dundee emerge as a relevant location. The Scottish Ministers advise that the most up to date data sources must be used for all analysis and direct the Developer to the MAU advice in this regard.
- 5.14.2 In line with the advice from the MAU, the Scottish Ministers advise that a full Socio-Economic Impact Assessment ("SEIA") must be included with the EIA Report and should be transparent in its methodological choices for assessment of socioeconomic impacts. The Scottish Ministers draw attention to Annex 1 of the MAU advice which may be of assistance when developing the SEIA.
- 5.14.3 The Scottish Ministers broadly agree with the impacts scoped in to the EIA Report in Table 9.23 of the Scoping Report. In relation to social impacts, the Scottish Ministers have had regard to the MAU advice and letter from the Developer on 02 November 2023 (reference: MVCNS-J1901-JVW-00001). The Scottish Ministers advise that their current position is that the Developer should consider

potential impacts on local communities as a result of the Proposed Development and outline how baseline data will be collected to assess impacts in the future. The Scottish Ministers are considering this position and, should this develop or change, the Developer will be notified.

- 5.14.4 In relation to economic impacts, the Scottish Ministers are broadly content with the proposed assessment approach as detailed in paragraph 9.6.8.6 of the Scoping Report, however recommend that the Developer include additional analysis regarding potential job creation in comparison to existing jobs in the study area, as outlined in the MAU advice.

## **5.15 Seascape, Landscape, Visual Impact (SLVIA) and Onshore Historic Environment**

- 5.15.1 Section 9.7.2 of the Scoping Report presents the study area defined for Seascape, Landscape, and Visual Impact Assessment (“SLVIA”) and Onshore Historic Environment, and a range of desk and site-based data sources are presented in Appendix 11. The Scottish Ministers are broadly content with the study area and the data sources presented.

- 5.15.2 A summary of the baseline and potential impacts of the Proposed Development, including a list of viewpoints based upon the key seascape, landscape and visual receptors are presented by the Developer in Sections 9.7.5 and 9.7.6. Appendix 12 of the Scoping Report presents wirelines and zones of theoretical visibility on which this is based. In line with the representations from NatureScot, Aberdeen City Council, Aberdeenshire Council, Angus Council, and HES, the Scottish Ministers are content to scope SLVIA and Onshore Historic Environment out of the EIA Report on the grounds that the Proposed Development’s distance from shore means no adverse impacts are likely.

- 5.15.3 For completeness, the Scottish Ministers advise that the Developer considers the requests from Angus Council and East Lothian Council regarding additional viewpoints and wirelines analysis to be provided alongside the EIA Report.

## **5.16 Climate Change**

- 5.16.1 The Scottish Ministers are broadly content with the Developer’s approach in assessing climate change and Greenhouse Gases (“GHG”) in Section 9.8 of the Scoping Report, note that the IEMA Environmental Impact Assessment Guide “Assessing Greenhouse Gas Emissions and Evaluating Their Significance” (“IEMA GHG Guidance”) referenced by the Developer, provides further insight on this matter. The Scottish Ministers have considered this together with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the requirement of the EIA Regulations to assess significant effects from the Proposed Development on climate. The Scottish Ministers therefore advise that the GHG

Assessment should include the pre-construction, construction, operation and decommissioning phases, including consideration of the supply chain as well as benefits beyond the life cycle of the Proposed Development. The NatureScot and East Lothian Council representations regarding climatic factors and GHG assessment must be fully addressed by the Developer in the EIA Report.

- 5.16.2 Alongside the GHG assessment, the Scottish Ministers highlight the NatureScot representation in relation to blue carbon assessment. The Scottish Ministers advise that consideration should be given to impacts on blue carbon as a result of the Proposed Development, as well as an expanded assessment for benthic ecology focusing on potential impacts on marine sediments.

### **5.17 Major Accidents and Disasters (MADS)**

- 5.17.1 The EIA Report must include a description and assessment of the likely significant effects deriving from the vulnerability of the Proposed Development to major accidents and disasters. The Developer should make use of appropriate guidance, including the recent Institute of Environmental Management and Assessment (“IEMA”) ‘Major Accidents and Disasters in EIA: A Primer’, to better understand the likelihood of an occurrence and the Proposed Development susceptibility to potential major accidents and hazards. The description and assessment should consider the vulnerability of the Proposed Development to a potential accident or disaster and also the Proposed Development potential to cause an accident or disaster.
- 5.17.2 The Scottish Ministers advise that existing sources of risk assessment or other relevant studies should be used to establish the baseline rather than collecting survey data and note the IEMA Primer provides further advice on this. This should include the review of the identified hazards from your baseline assessment, the level of risk attributed to the identified hazards and the relevant receptors to be considered.
- 5.17.3 The assessment must detail how significance has been defined and detail the inclusions and exclusions within the assessment. Any mitigation measures that will be employed to prevent, reduce, or control significant effects should be included in the EIA Report.

### **5.18 Human Health**

- 5.18.1 The Developer presents the range of study areas (Local Health Study Area, Regional Health Study Area, and National Health Study Area) in Section 9.10.2 of the Scoping Report and the data sources considered in Section 9.10.3 of the Scoping Report. The Scottish Ministers are largely content with the study areas and data sources presented.

5.18.2 The impacts proposed to be scoped in to the EIA Report during different phases of the Proposed Development are outlined in Table 9.35 of the Scoping Report, while the impacts proposed to be scoped out are outlined in Table 9.36. The Scottish Ministers are broadly content with the impacts proposed to be scoped in and out of assessment. However, the Scottish Ministers draw the Developer's attention to East Lothian Council's concerns regarding impacts on fishing and additional potential health impacts and request that this is fully considered in the EIA Report.

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

### **6.1 General**

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

## 7. Multi-Stage Consent

### 7.1 Background

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

Signed

Rebecca Bamlett

30 November 2023

Authorised by the Scottish Ministers to sign in that behalf.

**Appendix I: Consultation Responses & Advice**

*Please refer to separate document provided alongside the Scoping Opinion*

## **Appendix II: Gap Analysis**

*Please refer to separate document provided alongside the Scoping Opinion*