

Minister for Energy, Connectivity and the Islands

Neart na Gaoithe Offshore Wind Farm – Safety Zone Application

1 Purpose

- 1.1 To seek your approval for safety zones by Neart na Gaoithe Offshore Wind Limited and to issue a notice declaring safety zones, which are materially different from the application made by Neart na Gaoithe Wind Limited.

2 Priority

- 2.1 Routine.

3 Background

- 3.1 On 3 December 2018 the Scottish Ministers granted in favour of Neart na Gaoithe Offshore Wind Limited (Company Number SC356223) (“the Applicant”), a consent under section 36 of the Electricity Act 1989 (as amended) (“the Electricity Act”) for the construction and operation of the Neart na Gaoithe Offshore Wind Farm (“NnGOWF”) approximately 15.5km east of Fife Ness. The s.36 consent was subsequently varied on 4 June 2019 (“s.36 consent”).

4 The Application

- 4.1 On 20 January 2020 the Applicant submitted an application to the Scottish Ministers under section 95(2) of the Energy Act 2004 (as amended) (“the 2004 Act”) for a declaration, declaring that areas specified in the application be designated as safety zones for the purpose of securing the safety of individuals and vessels in the vicinity of the site during the period of its construction, operations and maintenance phases. Further detail on the responsibility of the Scottish Ministers in relation to safety zones is found at Annex 1. The application submitted by the Applicant on 20 January 2020 fulfils all requirements of Part 3 of Schedule 16 relating to what must be submitted within an application. All other Parts to Schedule 16 place obligations only on the Scottish Ministers.
- 4.2 The application includes an overview of the different stages of the project, a supporting safety case for the implementation of safety zones and a marine traffic assessment including marine traffic data gathered over 28 days during December 2018 and July 2019. The application also considers the impacts of the implementation of any safety zones on other users of the sea.
- 4.3 The Applicant sought a s.95 notice declaring the following safety zones:

During Construction	<p><i>A mandatory 500 metre (“m”) radius safety zone around each Wind Turbine Generator (“WTG”) and Offshore Substation Platforms (“OSP”) and/or their foundations whilst construction works are in progress, as indicated by the presence of a construction vessel. The safety zones will be triggered whenever a vessel is on station at a structure and undertaking construction activities. Up to ten of these safety zones may be active at any given time. (Rolling programme of implementation)</i></p>
	<p><i>A 50m radius around each WTG and OSP and/or their foundations when construction works have been completed but prior to wind farm commissioning or where construction works have only been partially completed. These safety zones will be active at any structure during the construction phase where a construction vessel is not present. Up to 56 of the 50m safety zones will be active at any given time.</i></p>
During Operations and Maintenance Phase	<p><i>A 500m radius around all major maintenance¹ works being undertaken, where major maintenance is as per the definition given in the 2007 Regulations. The safety zones will be active whenever a “major maintenance” vessel is on station at a structure during the operational phase. Up to five of these safety zones may be active at any given time.</i></p>

4.4 The 500m safety zones would be implemented on a rolling basis to ensure that safety zones are only “live” for those specific areas in which activities are taking place. Construction will be undertaken using but not limited to:

- Semi-Submersible Crane Vessel
- Heavy Transport Vessel
- Offshore Construction Vessels
- Jack Up Vessels (“JUV”)
- Service Operations Vessels (“SOVs”)
- Cable Laying Vessel; and
- Crew Transfer Vessels

4.5 Under the definition of major maintenance the Applicant stated that the types of vessels which would trigger a 500m safety zone would include but not be limited to:

- SOVs
- JUV
- Multi-purpose Vessels

¹ “Major maintenance” works are defined in The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”) as “works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such as the installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel”.

- Floating barges; and
- Heavy Lift Vessels.

5 Consultation

- 5.1 The consultation period ran from 11 February 2020 to 12 March 2020, a period of 30 days exceeding the 28 day minimum consultation period set out under Regulation 6 of the Electricity (Offshore Generating Stations) (safety zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”). Copies of the application were also available to download from the NnGOWF website and Marine Scotland’s website.
- 5.2 A Public Notice was published in accordance with the requirements of the 2007 Regulations, in the East Lothian Courier, the Dundee Courier and Fishing News for two successive weeks and once in Lloyd’s List, the Scotsman, the Edinburgh Gazette and Kingfisher Bulletin.
- 5.3 Notices were also issued in line with the requirements of the 2007 Regulations to the harbour masters of ports likely to be affected by the application and the relevant office of the Maritime and Coastguard Agency (“MCA”), requesting them to display the Public Notice at an address accessible, during normal office hours, to members of the public likely to be affected by the application. This was all undertaken prior to the outbreak of Covid-19.

6 Consultation responses

- 6.1 Comments on the Application were invited from the MCA, the Northern Lighthouse Board (“NLB”), UK Chamber of Shipping (“UK CoS”), the Scottish Fishermen’s Federation (“SFF”) as well as from Ports and Harbours and other legitimate users of the sea which may be affected by the safety zone.
- 6.2 A total of six responses were received. The responses from individual consultees together with the Applicant’s reply and MS-LOT’s consideration in each case can be found at Annex 2.
- 6.3 Whilst there was a general acceptance that the safety zones applications and dimensions were reasonable measures to secure the safety of mariners and those people working on the WTG and OSP, the MCA, although not formally objecting to the application, raised issues about aspects of the requested safety zone regime. The key points raised by the MCA are set out below:
- I. The MCA was generally supportive of the establishment of safety zones during the construction, operation and maintenance phases of the NnGOWF. However, the MCA did not agree that SOVs should be included within the 500m safety zone during ‘major maintenance’, because SOVs are primarily ‘walk to work’ vessels for routine transfer of technicians whilst the vessel is temporarily connected to a structure, via a gangway, with the potential to disengage at short notice.
 - II. The MCA noted that vessels navigating in the vicinity of offshore construction works should automatically keep clear in line with the International Regulations for Preventing Collisions at Sea (“COLREGs”),

especially given that SOV will be under Restricted in Ability to Manoeuvre status.

- III. The MCA reiterated that good seamanship and communication, in adherence to the COLREGs, should alleviate potential risks before a vessel approaches anywhere near 500m of an SOV and that an SOV should disconnect from the renewable energy installation far earlier than when a vessel is within 500m of a safety zone. The MCA advised that SOVs were still required to keep appropriate lookouts and react to any situation with potential risk, including communicating to vessels regarding safe distances. The MCA raised concern that reliance on a safety zone might reduce lookout arrangements. Should an incident occur, action to avoid the collision is still required, in compliance with the COLREGs. The MCA stated that other 'sensitive operations' do not require safety zones and are conducted safely (e.g. ship to ship transfers and helicopter activities), and that it is unaware of any reports of dangerous incidents happening as a result of vessels operating closely to SOVs, requiring emergency disconnects.

- 6.4 *Applicant response* – the Applicant disagreed with the MCA and stated that in its view SOVs do fall under the definition of major maintenance works, given that the vessel attaches to the operational installations. The Applicant said that mitigations, such as COLREGs, do not provide a clear radius around sensitive operations to ensure the safety of the associated personnel and vessels, and that safety zones provide clear, unambiguous demarcation of areas which should be avoided. The Applicant confirmed that it would have full emergency evacuations and detachment procedures, however without a safety zone in place around SOV during operation and maintenance activities, an increased number of unplanned or emergency disconnections may be likely and risks to personnel would not be 'As Low As Reasonably Practicable'. The Applicant said that issues had arisen where safety zones have not been present (i.e. fishing vessels passing within close proximity of vessels performing subsea operations).
- 6.5 The MCA, as the statutory consultee with responsibility for ensuring the navigational safety of the marine environment, provided specific advice on safety zones for when an SOV is attached to a structure during additional engagement with the Marine Scotland - Licensing Operations Team ("MS-LOT"). The comment regarding the inclusion of the SOV in the safety zone received from the MCA (outlined above) has been considered alongside the Application, the other representations, and subsequent supplementary advice received from the MCA.
- 6.6 MS-LOT is satisfied and supports the response from the MCA, particularly that there are appropriate reporting procedures and systems in place and that good seamanship and communication, in adherence with the COLREGs, will be undertaken. The Applicant has detailed in the application that guard vessels will be utilised where necessary as additional mitigation.

7 Options

- 7.1 As detailed in Annex 1, the Scottish Ministers may choose to:
- a) Approve the Application for safety zones (with or without prohibitions);
 - b) Reject the Application for safety zones;
 - c) Propose that a Safety Zone notice should be established which is materially different from that applied for; or
 - d) Call a public inquiry where objections are received and it is considered by the Scottish Ministers that a public inquiry should be held.
- 7.2 On consideration of the application and the response and additional advice received from the MCA, MS-LOT progressed Option C for this application.

8 Materially different Safety Zone Notice - Notice under schedule 16

- 8.1 MS-LOT considered the application in relation to the request for mandatory 500 metre safety zones around all “major maintenance” works, include around SOVs, alongside the consultation responses.
- 8.2 MS-LOT concluded that sufficient procedures were already in place regarding the safety of vessels and personnel during ‘walk to work’ activities and in so far as “major maintenance” is related to the transport of personnel to the renewable energy installation to undertake the major maintenance, a 500m safety zone should not be triggered where SOVs were utilised.
- 8.3 Under Schedule 16, paragraph 5, of the 2004 Act, where the Scottish Ministers propose to issue a safety zone notice that is materially different from the original safety zone application, and without holding a public inquiry, a notice of the proposal must be published in a way that brings it to the attention of persons likely to be affected by it. In addition, the notice of the proposal must be served on such persons considered appropriate. The notice must include a map describing where the relevant renewable energy installation is to be, or is being constructed, extended, operated or decommissioned; the waters in relation to which any declaration proposed will establish a safety zone; and any other provisions that the Scottish Ministers propose to include in the safety zone notice.
- 8.4 The notice of the proposal must also state the period within and the manner which objections to the proposal may be made. The period for making objections to such a notice must not be shorter than the minimum period which would be applicable if the notice were being published in respect of an application for a safety zone notice.
- 8.5 Under section 95 and Schedule 16 of the 2004 Act, MS-LOT, on behalf of the Scottish Ministers, served a notice to the Applicant on 05 June 2020, pursuant to Schedule 16(5)(1)(b) of the 2004 Act, which stated that Scottish Ministers propose to issue a safety zone in terms that were materially different from those applied for, and excluded triggering a 500m safety zone where SOVs were used during ‘walk to work’ activities and where these vessels were not directly involved in maintenance work.
- 8.6 Separate correspondence was sent to those consultees with an interest in the safety zone application: the MCA, NLB, Royal Yachting Association Scotland, Scottish Natural Heritage, SFF, and the UK CoS advising them of the Notice served. The notice was also published on Marine Scotland’s website.

- 8.7 A period of 28 days was given to allow for any comments to be submitted from interested parties, and for the Applicant to forward any objections to the proposal, all in accordance with Schedule 16 to the 2004 Act.

9 Responses to the Notice

- 9.1 No objections to the Notice were received.
- 9.2 The Applicant responded by stating that that it accepted the proposal to issue a s.95 safety zone notice which was materially different from the Application and excluded the implementation of a 500m safety zone around an SOV, where the SOV are used solely during 'walk to work' activities and not directly involved in maintenance work.

10 Advice

- 10.1 MS-LOT is satisfied that the original application for a safety zone received on 20 January 2020 was suitably advertised under the terms of the 2004 Act and the 2007 Regulations and that the regulatory requirements for consultation have been complied with. In addition, MS-LOT is satisfied that the Applicant has responded to the consultation responses received and no further updates are required to the application and the supporting documentation.
- 10.2 No objections were received regarding the Notice of the proposal for a safety zone served on behalf of the Scottish Ministers for reasons of a material difference to the originally proposed safety zone. All representations, including from the Applicant, confirmed approval for the proposal.
- 10.3 MS-LOT is satisfied that a public inquiry would not provide any new or additional material for the Minister's consideration and would advise that a public inquiry is not required.

11 Recommendations

- 11.1 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.”*
- 11.2 MS-LOT is satisfied that due to the high level of marine traffic in the area, it is appropriate to issue a s.95 notice specifying a rolling programme of safety zones during the construction and operation and maintenance phases of the project.
- 11.3 The implementation of “rolling safety zones” minimises potential disruption for other marine users, by restricting implementation to certain circumstances and

time-frames and is more proportionate than permanent exclusion zones. MS-LOT concludes that the implementation of such proportionate safety zones is required to secure the purposes set out at section 95(2) of the 2004 Act whilst minimising disruption to other marine users.

11.4 MS-LOT recommends that the Scottish Ministers issue a s.95 notice which is materially different from that applied for, in accordance with Schedule 16 of the 2004 Act, with regard to the use of SOVs during operation and maintenance phases. The safety zone notice will declare that the areas specified under the application, are safety zones for the purposes of securing the safety of the NnGOWF, individuals and vessels in its vicinity during the period of its construction, operation and maintenance however the safety zone notice will exclude SOV where the SOV are used solely during 'walk to work' activities and not directly involved in maintenance work:

- 1) *During Construction - mandatory "rolling" 500m safety zones established around each renewable energy installation and/or their foundations, whilst construction works are in progress, as indicated by the presence of a construction vessel. The safety zones will be triggered when a vessel is on station at a renewable energy installation and undertaking construction activities. Up to ten of these safety zones may be active at any given time.*
- 2) *During Construction - A 50m radius around each WTG and OSP and/or their foundations when construction works have been completed but prior to wind farm commissioning or where construction works have only been partially completed. These safety zones will be active at any structure during the construction phase where a construction vessel is not present. Up to 56 of the 50m safety zones will be active at any given time.*
- 3) *During Operations and Maintenance Phase - A 500m radius around all major maintenance works being undertaken, major maintenance works being defined in the Electricity Regulations 2007, at Regulation 2, as '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'. The safety zones will be active when a vessel involved in undertaking major maintenance works is attached to, or anchored next to the renewable energy installation; however, these safety zones will not include service operation vessels used during walk to work activities. Up to five safety zones may be active at any given time.*

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

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

11.7 A copy of the notice can be found at Annex 3.

12 Right of appeal

12.1 Where the Scottish Ministers *reject* an application, the applicant may lodge an appeal. Further detail on the right the appeal the Scottish Ministers' decision is found at 4.3 of Annex 1. The application is not being rejected.

Jessica Wilson
Marine Scotland Licensing Operations Team

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Copy 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		
Cabinet Secretary for Transport, Infrastructure and Connectivity			X		

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

Annex 1

Legislative background

1 Scotland Act 2016

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

2 Energy Act 2004

- 2.1 Applications for safety zones for renewable energy installations are permitted under section 95 of the 2004 Act. Section 95 of the 2004 Act is implemented in conjunction with schedule 16 of the 2004 Act.

- 2.2 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.”*

- 2.3 Section 95(3) of the 2004 Act provides that the Scottish Ministers may issue a notice either on an application made to him for the purpose by any person; or where no such application is made, on their own initiative.

- 2.4 Section 95(5) of the 2004 Act states that an area may be declared to be a safety zone only if it is an area around or adjacent to a place where a renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; but a safety zone may extend to waters outside the waters subject to regulation under this section.

- 2.5 Section 95(6) of the 2004 Act identifies that a notice may contain exclusions or conditions:

- Section 95(6)(c) states that a notice may “contain provision by virtue of which the area of a safety zone varies from time to time by reference to factors specified in, or determinations made in accordance with, the provisions of the notice;
- Section 95(6)(d) states that a notice may contain provision imposing prohibitions on the carrying on in a safety zone of activities specified in, or determined in accordance with, the provisions of the notice, or for the imposition of such prohibitions; and
- Section 95(6)(h) states that a notice may make different provision in relation to different cases.”

- 2.6 Under Section 95(7) of the 2004 Act, where a notice is issued under this section or a determination is made for the purposes of such a notice, the Scottish Ministers must either publish the notice or determination in such manner as is appropriate to bring it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or must secure that it is published in that manner either by the applicant for the notice; or in the case of a determination made by a person other than the Scottish Ministers, by the applicant for the notice or by the person who made the determination. References to determination in Section 95(8) to a determination for the purposes of a notice includes references to a determination made for those purposes in accordance with the notice, or with regulations under section 96 to either (a) impose a prohibition; (b) grant a permission; or (c) impose conditions in relation to a permission
- 2.7 Section 96(4) of the 2004 Act, states that provision may be made with respect to permissions and that this includes provision for the permissions to apply in relation only to such times and such periods as may be specified or described in that provision; and provision for the permissions to apply only to such vessels, such persons and such purposes as may be specified or described in that provision
- 2.8 Paragraph 3 of Schedule 16 of 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 relevant 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 such information prescribed by regulations made by the Scottish Ministers. The remainder of Schedule 16 only places obligations on the Scottish Ministers.
- 2.9 Paragraph 4(3) of Schedule 16 to the 2004 Act provides 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...”.
- 2.10 Paragraph 5 of Schedule 16 to the 2004 Act lists the actions that the Scottish Ministers must undertake where they propose to issue safety zone notice in terms that are materially different from those applied for and without holding a public inquiry. The Scottish Ministers must publish notice of the proposal and allow those affected by it to raise any objections within a timeframe that is not shorter than the minimum period of the consultation already held. Where an objection is served to the Scottish Ministers, they must consider such objection and determine whether a public inquiry is necessary.

3 Electricity (Offshore Generating Stations) (safety zones) (Application Procedures and Control of Access) Regulations 2007

- 3.1 The application process for applicants to the Secretary of State (interpreted as to the Scottish Ministers following the transfer of powers) is set out in Part 2 of the Electricity (Offshore Generating Stations) (safety zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”).
- 3.2 In the 2007 Regulations, regulations 3(a), (c) and (d) list the information that an applicant must submit when applying for safety zones for renewable energy installation not powered by waver or tides. Sections 4 and 5 sets out the requirement for an applicant to publish a notice of application and where such notice must be served. Regulation 4 requires the Public Notice to be published for two successive weeks in one or more local newspapers, in Lloyd’s List and in one or more national newspapers, the Edinburgh Gazette and in one or more appropriate fishing trade journals. Regulation 6 establishes the minimum consultation period of 28 days for receiving objections. Regulation 7 makes provisions for the publication of notice of a public inquiry, if a public inquiry is to be held under Schedule 16 of the 2004 Act.

4 Applying for safety zones around offshore renewable energy installation guidance

- 4.1 An application for safety zone must be completed in accordance with the following Department of Climate Change (“DECC”) Guidance, [‘Applying for safety zones around offshore renewable energy installations’](#) (November 2011) (“DECC 2011 Guidance”).
- 4.2 Section 4 of the DECC 2011 Guidance sets out the process for applying for a safety zone, which includes the requirement for an application for s.36 consent to consider whether a safety zone is needed as part of the assessment of the impact of the proposed installation on the safety of navigation. The need for, and environmental impact of, safety zones was identified in the original [Environmental Impact Assessment Report \(2018\)](#) which accompanied the applications for the s.36 consent and the Marine Licences under section 20(1) of the Marine (Scotland) Act 2010.

Annex 2

1. Consultation responses

- 1.1. A range of views about the safety zones were submitted by consultees. Whilst there was a general acceptance that safety zones dimensions and applications set out in the application were reasonable measures to secure the safety of mariners and those people working on the WTGs and OSPs, a number of consultees raised issues about aspects of the proposed safety zones. A summary of the responses of individual consultees and the Applicant's response to the points raised is set out below.
- 1.2. **Fife Council** confirmed that they were content that the relevant information regarding safety zones around NnGOWF had been shared with the relevant ports.
- 1.3. Applicant response – the Applicant noted Fife Council's response.
- 1.4. **The Maritime and Coastguard Agency ("MCA")** were generally supportive of the establishment of a safety zone during the construction and operation and maintenance phases of the NnGOWF, noting that during the operational phase, safety zones are only being applied for around any structure where "major maintenance" (as defined) is undertaken.
 - 1.4.1. The MCA did not agree that Service Operations Vessels (SOVs) should be included within the safety zone during the operations and maintenance phase, due to SOV being 'walk to work' vessels, which facilitate the routine transfer of technicians while the vessel is temporarily connected to a structure via a gangway with the potential to disengage, as required, at short notice.
 - 1.4.2. The MCA emphasised that there is a difference in the need for a safety zone where large vessels are conducting major maintenance works for long periods of time, compared with very short term transfers at multiple locations through the day and where 'walk to work' could be disconnected relatively quickly if required.
 - 1.4.3. The MCA acknowledged that having a safety zone in place provided additional reassurance to the Applicant and that more emphasis should surround safety zone broadcasts. However, the MCA noted that other vessels should automatically keep clear of the construction site, as per the International Regulations for Preventing Collisions at Sea ("COLREGs"), since the SOV will be under 'Restricted in Ability to Manoeuvre' ("RAM") status and that good seamanship and communication, in adherence of the COLREGs, should ensure any potential risks are alleviated before a vessel approaches anywhere near 500m from an SOV. The MCA highlighted that regardless of whether a safety zone is in place or not, the SOV is still required to keep appropriate lookouts and react to any situation with potential risk, including communicating to vessels regarding safe distances.
 - 1.4.4. Applicant response – the Applicant notes the MCA comments and responded that it felt that other mitigations (such as COLREGs) do not provide a clear radius around sensitive operations to ensure the safety of the associated

personnel and vessels. In addition it stated that the benefit of the safety zone is a clear and unambiguous demarcation of areas which should be avoided.

- 1.4.5. The Applicant stated that it would have full emergency evacuations and detachment procedures, however without a safety zone in place around SOV during operation and maintenance activities, an increased number of unplanned/emergency disconnections would be likely, and risks to personnel would not be As Low As Reasonably Practicable
- 1.4.6. The Applicant believes that SOVs do fall under the major maintenance works, given that the vessel attaches to the operational installations, and disagreed with the MCA in so far as SOV were not a major maintenance vessel.
- 1.4.7. The Applicant stated that the presence of safety zones has been unremarkable elsewhere in the UK; however, it understands that issues have arisen where safety zones have not been present i.e., fishing vessels passing within close proximity of vessels performing subsea operations.
- 1.4.8. Marine Scotland's response – MS-LOT requested that the Applicant engage further with the MCA.
- 1.4.9. Applicant response – the Applicant stated that it considers the MCA representation has been suitably addressed and as such would not repeat points made and that it did not feel that it needed to engage directly with the MCA further.
- 1.4.10. The Applicant confirmed it would be fully compliant with the COLREGs however feels they are insufficient to protect the SOV operations when at a structure. It also reiterated that SOV should fall under the definition of “major maintenance”, acknowledging that SOV are a relatively new type of sea vessel to be used in an intensive maintenance campaign increasing the number of ‘walk to work’ transfers.
- 1.4.11. As the Applicant would not engage further with the MCA, MS-LOT forwarded the letter to the MCA to allow it to provide comments.
- 1.4.12. The MCA Response – the MCA reiterated its support of safety zones highlighting the benefit to large construction vessels, engaged in construction and major maintenance. However, its view remained that it does not consider SOVs to be major maintenance vessels, given that they can be disengaged at short notice and are primarily ‘walk to work’ vessels, with the vessel not undertaking the maintenance. It therefore saw no additional benefit that the safety zone brought to an SOV.
- 1.4.13. The MCA highlighted that emergency disconnection should occur far earlier than when a vessel is within 500m of a safety zone and that it was concerned that lookout arrangements would be reduced for SOV, due to a reliance on that safety zone. If an incident were to occur, compliance with the COLREGs action to avoid the collision will still be required.
- 1.4.14. The MCA stated that there are ‘sensitive operations’ which do not require a safety zone and are conducted safely e.g. ship to ship transfers and helicopter activities to a vessel. It further highlighted the importance of existing practices

and procedures of good seamanship and communication, and adherence of COLREGs and that it is unaware of any reports of dangerous occurrences happening as a result of vessels operating closely to SOVs, requiring emergency disconnects.

Marine Scotland's Response – Given that the MCA is the statutory consultee with responsibility for ensuring the navigational safety of the marine environment, MS-LOT is satisfied with the MCA representation that there are appropriate reporting procedures and systems in place for dangerous manoeuvres and COLREGs contraventions cover the use of SOV. Therefore, as per the MCA response, MS-LOT is content not to include the SOV as part of the safety zone during operation and maintenance phases.

- 1.5. **The Northern Lighthouse Board (“NLB”)** had no objections to the safety zones and recommended that the Applicant issue a Notice to Mariners prior to the commencement of construction or major maintenance activities, clearly stating the safety zone locations and nature of the activities.
 - 1.5.1. Applicant response – the Applicant confirmed that details of the safety zones will be promulgated in advance of the associated operations and that the on-site vessel assigned to monitoring and policing duties will also make contact with third party vessels to inform them of any active or soon to be active safety zones.
 - 1.5.2. Marine Scotland's response – MS-LOT is satisfied that the Applicant has fully addressed the points raised by the NLB in its response to the Application.
- 1.6. **The Scottish Fishermen's Federation (“SFF”)** stated that if the safety zone is as per the description in the application, then it had no comments on the application.
 - 1.6.1. Applicant response – the Applicant noted the SFF's response.
- 1.7. **Scottish Natural Heritage (“SNH”)** offered no comments on the application.
 - 1.7.1. Applicant response – the Applicant noted SNH's response.
- 1.8. **The UK Chamber of Shipping (“UK CoS”)** had no concerns with the information contained in the application and noted that UK CoS encourages the use of safety zones to ensure the safety of seafarers and safe navigation at sea. UK CoS further remarked that they encourage full compliance with the relevant legislation and correct application of the safety zones during operational use. The area should be correctly and adequately marked using International Association of Marine Aids to Navigation and Lighthouse Authorities (“IALA”) buoyage, in cooperation with NLB, and suitable navigation warnings should be broadcast through all available means to ensure the safety of navigation and full compliance with the International Regulations for Preventing Collisions at Sea (“COLREGs”). UK CoS welcomed the opportunity to be involved in future discussions related to NnGOWF.
 - 1.8.1. Applicant response – the Applicant confirmed that the safety zones will be deployed and monitored as required by the legislation and that, in line with the application, buoyage will be used to mark the site, the positions and

specifications of which have been agreed by the NLB. The Applicant further stated that promulgation of information will be undertaken as required.

1.8.2. Marine Scotland's response – MS-LOT is satisfied that the Applicant has fully addressed the points raised by the UK CoS in its response to the Application.

1.9. **The Royal Yachting Association Scotland (“RYA Scotland”)** stated that it was happy with the proposals and confirmed that publicity for the works needs to be carefully considered. RYA Scotland further detailed that Notices to Mariners should be sent to all the marinas between Newcastle and Peterhead as well as important harbours, however highlighted that due to the number of bodies issuing Notices to Mariners on the East Coast it is unreasonable to expect visiting boats to be aware of the safety zones and so therefore confirmed that guard vessels and security messages will be important.

1.9.1. Applicant response – the Applicant noted RYA Scotland's response.

1.9.2. Marine Scotland's response – MS-LOT is satisfied that the Applicant will undertake promulgation of information and also that the on-site vessel assigned to monitoring and policing duties will make contact with third party vessels to inform them of any active or soon to be active safety zones.

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Annex 3

Notice of the Safety Zone

MS.MarineRenewables@gov.scot



Scottish Government
Riaghaltas na h-A
gov.scot

Neart na Gaoithe Offshore Wind Limited
Atria One
144 Morrison Street
Edinburgh
United Kingdom
EH3 8EX

DD MONTH YYYY

Dear Ms Gilchrist,

ENERGY ACT 2004: OFFSHORE WIND ELECTRICITY GENERATING STATION

SAFETY ZONE APPLICATION – NEART NA GAOITHE OFFSHORE WIND FARM APPROXIMATELY 15.5KM EAST OF FIFE NESS.

1. The Application

1.1. I am directed by the Scottish Ministers to refer to the Safety Zone application and supporting documentation (“the Application”) submitted on 20 January 2020 by Neart na Gaoithe Offshore Wind Limited (Company Number SC356223)(“the Applicant”) to the Scottish Ministers for a notice (“a s.95 notice”) be issued by the Scottish Ministers under section 95(2) of the Energy Act 2004 (as amended) (“the 2004 Act”), declaring that the areas specified in the Application be safety zones for the purpose of securing the safety of the Neart na Gaoithe Offshore Wind Farm (“NnGOWF”) (“the Development”) and individuals and vessels in its vicinity during the periods of construction, operation and maintenance.

1.2. The Applicant requested a s.95 notice declaration in the following terms:

During the construction of the Development:

- 1) *A mandatory 500 metre (“m”) radius safety zone around each Wind Turbine Generator (“WTG”) and Offshore Substation Platform (“OSP”) and/or their foundations whilst construction works are in progress, as indicated by the presence of a construction vessel. The safety zones will be triggered whenever a vessel is on station at a structure and undertaking*

construction activities. Up to ten of these safety zones may be active at any given time. (Rolling programme of implementation).

- 2) *A 50 m radius around each WTG and OSP and/or their foundations when construction works have been completed but prior to wind farm commissioning or where construction works have only been partially completed. These safety zones will be active at any structure during the construction phase where a construction vessel is not present. Up to 56 of the 50 m safety zones will be active at any given time.*

During Operations and Maintenance Phase of the Development:

- 3) *A 500 m radius around all major maintenance^{*2} works being undertaken, where major maintenance is as per the definition given in the Electricity Regulations 2007. The safety zones will be active whenever a “major maintenance” vessel is on station at a structure during the operational phase. Up to five of these safety zones may be active at any given time.*

- 1.3. The application proposed that the 500m safety zones would be implemented on a rolling basis to ensure that safety zones are only “live” for those specific areas in which activities are taking place. Construction will be undertaken using but not limited to:

- Semi-Submersible Crane Vessel
- Heavy Transport Vessel
- Offshore Construction Vessels
- Jack Up Vessels (“JUV”)
- Service Operations Vessels (“SOVs”)
- Cable Laying Vessel; and
- Crew Transfer Vessels

- 1.4. Under the definition of major maintenance the Applicant stated that the types of vessels which would trigger a 500m safety zone would include but not be limited to:

- SOVs
- JUV
- Multi-purpose Vessels
- Floating barges; and
- Heavy Lift Vessels.

- 1.5. A Notice of Application (the “Public Notice”) was published and served by the Applicant in accordance with the requirements of the 2004 Act and regulations 4 and 5 of the The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”).

² “Major maintenance” works are defined in The Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007 (“the 2007 Regulations”) as “works relating to any renewable energy installation which has become operational, requiring the attachment to, or anchoring next to, such as the installation of a self-elevating platform, jack-up barge, crane barge or other maintenance vessel”.

2. Representations

2.1. The Scottish Ministers note that a range of views concerning the safety zones were requested by the Applicant. There was a general acceptance that 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 wind turbines, including their foundations/substructures. A full summary of the views of all individual consultees and the Applicant's response to the points raised is set in Annex 1. The Maritime and Coastguard Agency ("MCA"), although not formally objecting to the application, did raise issues about aspects of the requested safety zones which together with a summary of the Applicant's response is set out below:

- I. The MCA was generally supportive of the establishment of safety zones during the construction, operation and maintenance phases of the NnGOWF. However, the MCA did not agree that SOVs should be included within the 500m safety zone during 'major maintenance', because SOVs are primarily 'walk to work' vessels for routine transfer of technicians whilst the vessel is temporarily connected to a structure, via a gangway, with the potential to disengage at short notice.
- II. The MCA noted that vessels navigating in the vicinity of offshore construction works should automatically keep clear in line with the 'International Regulations for Preventing Collisions at Sea' ("COLREGs"), especially given that SOV will be under 'Restricted in Ability to Manoeuvre' status.
- III. The MCA reiterated that good seamanship and communication, in adherence to the COLREGs, should alleviate potential risks before a vessel approaches anywhere near 500m of an SOV and that an SOV should disconnect from the renewable energy installation earlier than when a vessel is within 500m of a safety zone. The MCA advised that SOVs were still required to keep appropriate lookouts and react to any situation with potential risk, including communicating to vessels regarding safe distances. The MCA raised concerns that reliance on a safety zone might reduce lookout arrangements. Should an incident occur, action to avoid the collision was still required, in compliance with the COLREGs. The MCA stated that other 'sensitive operations' do not require safety zones and are conducted safely (e.g. ship to ship transfers and helicopter activities) and that it is unaware of any reports of dangerous incidents happening as a result of vessels operating closely to SOVs, requiring emergency disconnects.

2.2. *Applicant response* – the Applicant disagreed with the MCA and stated that in its view SOVs fall under the definition of major maintenance works given that the vessel attaches to the operational installations. The Applicant feels that mitigations, such as COLREGs, do not provide a clear radius around sensitive operations to ensure the safety of the associated personnel and vessels and that safety zones provide clear, unambiguous demarcation of areas which should be avoided. The Applicant confirmed that it would have full emergency evacuations and detachment procedures, however without a safety zone in place around SOV during operation and maintenance activities, an increased

number of unplanned or emergency disconnections may be likely and risks to personnel would not be As Low As Reasonably Practicable. The Applicant said that it understood that issues had arisen where safety zones have not been present (i.e., fishing vessels passing within close proximity of vessels performing subsea operations).

- 2.3. The MCA is the statutory consultee with responsibility for ensuring the navigational safety of the marine environment and subsequently provided specific advice on safety zones for when an SOV is attached to a structure. The comment regarding the inclusion of the SOV in the safety zone received from the MCA (outlined above) has been considered alongside the Application, the other representations, and subsequent supplementary advice from the MCA.
- 2.4. The Scottish Ministers are satisfied that there are appropriate reporting procedures and systems in place and that good seamanship and communication, in adherence with the COLREGs, will be undertaken. The Applicant has detailed in the Application that guard vessels will be utilised where necessary as additional mitigation.
- 2.5. The Scottish Ministers considered the Application in relation to the request for mandatory 500 metre safety zones around all “major maintenance” works, (this would include around SOVs), along with the responses from the MCA.
- 2.6. The Scottish Ministers concluded that sufficient procedures were already proposed regarding the safety of vessels and personnel during ‘walk to work’ activities and decided that in so far as “major maintenance” related to the transition of personnel to the renewable energy installation to undertake the major maintenance, this would not trigger a 500m safety zone where SOV were utilised.
- 2.7. Following receipt of an application for a safety zone, the Scottish Ministers have several options, as provided under sections 95 and Schedule 16, paragraph 5, of the 2004 Act, and may choose to:
 - a) Approve the Application for safety zones (with or without prohibitions);
 - b) Reject the Application for safety zones;
 - c) Propose that a Safety Zone notice should be established which is materially different from that applied for; or
 - d) Call a public inquiry where objections are received and it is considered by the Scottish Ministers that a public inquiry should be held.
- 2.8. On consideration of the application, and the response and additional advice received from the MCA, the Scottish Ministers progressed option c for the Application.
- 2.9. Under Schedule 16, paragraph 5 of the 2004 Act, where the Scottish Ministers propose to issue a safety notice that is materially different in terms from those applied for a notice of the proposal, and without holding a public inquiry, a notice of the proposal must be published in a way that brings it to the attention of persons likely to be affected by it. In addition, the notice of the proposal must be served on such persons considered appropriate. The notice must include a map describing where the relevant renewable energy installation is to be, or is

being constructed, extended, operated or decommissioned; the waters in relation to which any declaration proposed will establish a safety zone and any other provisions that the Scottish Ministers propose to include in the safety zone notice.

- 2.10. The notice of the proposal must also state the period within and the manner which objections to the proposal may be made. The period for making objections to such a notice must not be shorter than the minimum period which would be applicable if the notice were being published in respect of an application for a safety zone notice.
- 2.11. Under section 95 and Schedule 16 of the 2004 Act, MS-LOT on behalf of the Scottish Ministers, served a notice to the Applicant on 05 June 2020, pursuant to Schedule 16(5)(1)(b) of the 2004 Act, which stated that it propose to issue a safety zone in terms that were materially different from those applied for, and excluded triggering a 500m safety zone where SOVs are used during 'walk to work' activities and where these vessels are not directly involved in maintenance work.
- 2.12. Separate correspondence was sent to those consultees with an interest in the safety zone application, the MCA, NLB, Royal Yachting Association Scotland, Scottish Natural Heritage, SFF, and the UK CoS advising them of the Notice served. The notice was also published on Marine Scotland's website.
- 2.13. A period of 28 days was given to allow for any comments to be submitted from interested parties and for the Applicant to forward any objections to the proposal all in accordance with Schedule 16 to the 2004 Act.
- 2.14. No objections to the Notice were received.
- 2.15. The Applicant's response accepted the proposal to issue a s.95 safety zone notice materially different from the Application, excluding the implementation of a 500m safety zone around an SOV, where the SOV are used solely during 'walk to work' activities and not directly involved in maintenance work.

3. The decision of the Scottish Ministers

- 3.1. In addition to the points set out in section 2 above, the Scottish Ministers:
 - note "*Major maintenance*" works and "*standard safety zone*", as defined in the 2007 Regulations;
 - have considered the points raised from the MCA and are satisfied that there are appropriate reporting procedures and systems in place for dangerous manoeuvres and COLREGs contraventions cover the use of SOV. Therefore, the Scottish Ministers are content that the transition of personnel to the renewable energy installation to undertake the major maintenance would not trigger a 500m safety zone where SOV were utilised;
 - note that the NnGOWF will be marked and lit in accordance with relevant requirements as detailed in the approved Lighting and Marking Plan;

- note that as indicated in the application, the Applicant has confirmed that there will be guard vessel(s) during the construction, and operation and maintenance phases of the project;
- note that the Applicant has stated that any infringements of the safety zone deemed as representing dangerous behaviour, unsafe navigational acts (as required under the relevant regulations implementing international conventions), or repeated entry will be reported to Marine Scotland and the MCA as the relevant authorities.
- note that the Applicant will issue regular Notices to Mariners and has also indicated it will promulgate relevant information about construction operations and safety zones through Kingfisher fortnightly bulletins, weekly notices of operations etc. (such information should also be sent to appropriate contacts within the Scottish Government and Marine Scotland to keep them informed of progress). Throughout the construction, operation and maintenance phases, the development will be marked and charted as required by the NLB;
- note that vessels engaged in the construction of the wind farm or its major maintenance will, in the first instance, warn any unauthorised vessels that look as if they might be on a trajectory which would take them into a safety zone, to alter their course;
- note that within areas declared to be a 500 metre safety zone or a 50 metre safety zone, the vessels permitted to enter and remain in the zone are vessels involved in activities related to construction and major maintenance works;
- note that the Applicant has stated that there would be a maximum of 10 safety zones of 500 metres radius around structures at any particular time during construction;
- having considered the representations and all other material considerations, does not consider it appropriate for a public inquiry to be held with respect to the application or the revised safety zone proposed by the Scottish Ministers; and
- a separate application will be made for the decommissioning phase.

4. The Issuing of the Notice declaring a safety zone

- 4.1. For the purposes of this notice, the NnGOWF comprises not more than 54, three-bladed horizontal axis WTGs and associated inter-array cabling, with up to two offshore substation platforms and associated interconnector cables for which consent was granted by the Scottish Ministers under section 36 of the Electricity Act 1989 on 3 December 2018 and subsequently varied on 4 June 2019.
- 4.2. In light of the matters set out above, the Scottish Ministers consider that the declaration of safety zones of the type requested during the construction,

phase of the Development, as revised by the Scottish Ministers in relation to SOVs are appropriate for the purposes of securing the safety of:

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

4.3. The implementation of “rolling safety zones” minimises potential disruption for other marine users, by restricting implementation to certain circumstances and time-frames and is more proportionate than permanent exclusion zones. The Scottish Ministers conclude that the implementation of such proportionate safety zones is required to secure the purposes set out at section 95(2) of the 2004 Act whilst minimising disruption to other marine users.

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

- 4) During Construction - *mandatory “rolling” 500m safety zones established around each renewable energy installation and/or their foundations, whilst construction works are in progress, as indicated by the presence of a construction vessel. The safety zones will be triggered when a vessel is on station at a renewable energy installation and undertaking construction activities. Up to ten of these safety zones may be active at any given time.*
- 5) During Construction - *A 50m radius around each WTG and OSP and/or their foundations when construction works have been completed but prior to wind farm commissioning or where construction works have only been partially completed. These safety zones will be active at any structure during the construction phase where a construction vessel is not present. Up to 56 of the 50m safety zones will be active at any given time.*
- 6) During Operations and Maintenance Phase - *A 500m radius around all major maintenance works being undertaken, major maintenance works being defined in the Electricity Regulations 2007, at Regulation 2, as ‘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’. The safety zones will be active when a vessel involved in undertaking major maintenance works is attached to, or anchored next to the renewable energy installation; however, these safety zones will not include service operation vessels used during walk to work activities. Up to five safety zones may be active at any given time.*

4.5. This notice comes into force from the date of this letter.

Yours sincerely,

Marine Scotland Licensing Operations Team

Cc

[Insert full list of consultees]

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Annex 1 Representations to the original application for a safety zone

- i. Fife Council confirmed that they were content that the relevant information regarding safety zones around NnGOWF had been shared with the relevant ports.

Applicant response – the Applicant noted Fife Council’s response.

- ii. The Maritime and Coastguard Agency (“MCA”) were generally supportive of the establishment of a safety zone during the construction and operation and maintenance phases of the NnGOWF.

The MCA noted that during the operational phase, it was proposed that safety zones were only being applied around any structure where “major maintenance” is underway. The MCA highlighted the definition of major maintenance in the 2007 regulations as being: “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.” The MCA suggested that under this definition, vessel types that trigger a major maintenance safety zone include, but are not limited to:

- Service Operations Vessels (SOV);
- Jack up vessels;
- Multi-purpose vessels;
- Floating barges; and
- Heavy Lift Vessels.

The MCA supported the establishment of a safety zone, but disagreed that SOVs should be included within the operations and maintenance phase. The MCA stated that SOVs are ‘Walk to Work’ vessels, which facilitate the routine transfer of technicians to and from a structure. They said that while the vessel is temporarily connected to a structure via a gangway during this period, it can be disengaged, as required, at short notice. The MCA therefore considered that applying this part of the legislation to a routine transfer operation is stretching the intentions of ‘major maintenance’.

The MCA highlighted that much of the restriction and limitation regarding the use of an SOV includes manoeuvrability around the windfarm and on approach to the installation where there was no protection of a safety zone. The MCA recognised that an SOV may be required to undertake craning operations; however, the MCA did not consider these routinely to be large lift, or ‘major activities’ to the extent seen with other construction vessels.

The MCA emphasised that there is a difference in the need for a safety zone where large vessels are conducting major maintenance works for long periods of time, compared with very short term transfers at with multiple locations through the day, and where ‘walk to work’ could be disconnected relatively quickly if required.

The MCA noted that other vessels should automatically keep clear, as per the International Regulations for Preventing Collisions at Sea (“COLREGs”), since

the SOV will be under 'Restricted in Ability to Manoeuvre' ("RAM") status. Furthermore, it explained that good seamanship and communication, in adherence of the COLREGs, should ensure any potential risks are alleviated before a vessel approaches anywhere near 500m from an SOV. The MCA highlighted that regardless of whether a safety zone is in place or not, the SOV is still required to keep appropriate lookouts and react to any situation with potential risk, including communicating to vessels regarding safe distances.

The MCA acknowledged that having a safety zone in place would provide additional reassurance to the Applicant and that more emphasis surrounds broadcasts relating to safety zones; however, it stated that there are appropriate reporting procedures and systems in place for dangerous manoeuvres and COLREGs contraventions, meaning that there was no real benefit for applying a safety zone to include SOV during operation and maintenance.

Applicant response – the Applicant noted the MCA comments and responded that it felt that other mitigations (such as compliance with COLREGs) did not in of themselves provide a clear radius around sensitive operations, which should be avoided to ensure the safety of the associated personnel and vessels. In addition, it stated that the benefit of the safety zone was that it provided a clear and unambiguous demarcation of areas which should be avoided.

The Applicant stated that it would have full emergency evacuations and detachment procedures in place, however, without a safety zone in place around SOV during operation and maintenance activities, an increased number of unplanned / emergency disconnections would be likely. Furthermore, the Applicant stated that risks to personnel are not 'As Low As Reasonably Practicable' ("ALARP") unless every practical measure has been taken, and therefore, where allowed under legislation it would seek a safety zone.

In addition, the Application confirmed that it believed that SOVs did fall under the major maintenance works as defined in the 2007 Regulations given that the vessel attaches to the operational installations, as defined in the legislation. The Applicant disagreed with the comments from the MCA in so far as SOV were not a major maintenance vessel, stating that the legislation made no reference to a minimum timeframe at which a vessel is required to be at a structure to warrant being considered as major maintenance, nor does it make any reference to a frequency. In addition, it highlighted that SOV carry out craning operations during which time they are vulnerable and furthermore, as any during walk to work operation is considered a sensitive operation with risk to personnel, a safety zone is warranted.

The Applicant stated that the presence of safety zones to date in wind farms had been unremarkable; however, it is understood that issues have arisen where safety zones have not been present (e.g. fishing vessels passing within close proximity of vessels performing subsea operations).

Marine Scotland's response – the Scottish Ministers requested that the Applicant engage further with the MCA.

Applicant response – the Applicant stated in a letter to Marine Scotland that it considers that the MCA representation had been suitably addressed and it did not feel that it needed any further engagement with the MCA.

That being said, the Applicant highlighted that it wished to expand on two points raised, the first being whether the COLREGs is sufficient to protect the SOV operations when at a structure as the MCA suggests.

The Applicant stated that all its vessels would be fully compliant with COLREGs. However, the only means by which a safe distance can be legally enforced is via a statutory safety zone and that only using the COLREGs does not offer the same protection.

The second point the Applicant wished to reiterate was whether the SOV should fall under the definition of “major maintenance”. The Applicant acknowledged SOVs are a relatively new type of sea vessel, as is the use of SOV for an intensive summer maintenance campaign which carries the potential for an increased number of Walk to Work transfers. The Applicant considered that the “major maintenance” definition was intended to offer protection to any sensitive operations associated with attachment to an operational turbine during the operational phase, and not exclusively to “long term” activities.

The MCA Response – the MCA reiterated its support of the implementation of safety zones, highlighting the benefit to large construction vessels, such as jack up barges or heavy lift vessels for example, specifically engaged in construction and major maintenance. However, its view remained that it did not consider SOV to be major maintenance vessels, and therefore SOV should not trigger a safety zone around a renewable energy installation.

Given that SOV can be disengaged at short notice and are primarily ‘Walk to Work’ vessels used to transfer technicians undertaking maintenance on the structure and not the vessel undertaking the maintenance, the MCA saw no additional benefit the safety zone brought to an SOV.

With regard to the Applicant’s statement that it would have ‘full emergency evacuations and detachment procedures in place’ the MCA suggested that emergency disconnection should occur far earlier than when a vessel is within 500m of a safety zone. The MCA raised concerns that the effective lookout arrangements would be reduced should a safety zone be in place for SOV, due to a reliance on the effectiveness of that safety zone. If an incident were to occur, compliance with the COLREGs action to avoid the collision would still be required.

The MCA further commented that there are a number of maritime ‘sensitive operations’ which do not require a safety zone and are conducted safely (e.g. ship-to-ship transfers, cable laying, helicopter activities to a vessel and survey activities). Safety zones in the MCA’s view do not guarantee that vessels will stay away, however it potentially adds a layer of mitigation, but cannot be at the expense of proper lookout. It further highlighted the importance of existing practices and procedures of good seamanship and communication, and adherence of COLREGs.

In addition, the MCA confirmed that it had not been made aware of any reports of dangerous occurrences happening as a result of vessels operating closely to SOVs, which had required emergency disconnects.

Marine Scotland's Response – The 2007 Regulations, state 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;

and that a “standard safety zone” meaning includes:

(a) in the case of the proposed or ongoing construction, extension or decommissioning of a wind turbine, or of major maintenance works in respect of such an installation, a safety zone with a radius of 500 metres measured from the outer edge at sea level of the proposed or existing wind turbine tower;

The Scottish Ministers are satisfied that there are appropriate reporting procedures and systems in place for dangerous manoeuvres and COLREGs contraventions cover the use of SOV. Therefore, the Scottish Ministers are content not to include the SOV as part of the safety zone during operation and maintenance phases.

- iii. The Northern Lighthouse Board (“NLB”) had no objections to the safety zones and recommended that the Applicant issue Notice to Mariners prior to the commencement of construction or major maintenance activities, clearly stating the safety zone locations and nature of the activities.

Applicant response – the Applicant confirmed that details of the safety zones will be promulgated in advance of the associated operations and that the on-site vessel assigned to monitoring and policing duties will also make contact with third party vessels to inform them of any active or soon to be active safety zones.

Marine Scotland's response – the Scottish Ministers are satisfied that the Applicant has fully addressed the points raised by the NLB in its response to the Application.

- iv. The Scottish Fishermen's Federation (“SFF”) stated that if the safety zone is as per the description in the Application, then it had no comments on the Application.

Applicant response – the Applicant noted the SFF's response.

- v. Scottish Natural Heritage (“SNH”) offered no comments on the Application.

Applicant response – the Applicant noted SNH's response.

- vi. The UK Chamber of Shipping (“UK CoS”) had no concerns with the information contained in the Application and noted that UK CoS encourages the use of safety zones to ensure the safety of seafarers and safe navigation at sea. UK CoS further remarked that they encourage full compliance with the relevant legislation and correct application of the safety zones during operational use. The area should be correctly and adequately marked using International Association of Marine Aids to Navigation and Lighthouse Authorities (“IALA”) buoyage, in cooperation with NLB, and suitable navigation warnings should be broadcast through all available means to ensure the safety of navigation and full compliance with the International Regulations for Preventing Collisions at Sea (“COLREGs”).

UK CoS welcomed the opportunity to be involved in future discussions related to NnGOWF.

Applicant response – the Applicant confirmed that the safety zones will be deployed and monitored as required by the legislation and that, in line with the Application, buoyage will be used to mark the site, the positions and specifications of which have been agreed by the NLB. The Applicant further stated that promulgation of information will be undertaken as required.

Marine Scotland's response – the Scottish Ministers are satisfied that the Applicant has fully addressed the points raised by the UK CoS in its response to the Application.

- vii. The Royal Yachting Association Scotland ("RYA Scotland") stated that is was happy with the proposals and confirmed that publicity for the works needs to be carefully considered. RYA Scotland further detailed that Notices to Mariners should be sent to all the marinas between Newcastle and Peterhead as well as important harbours, however highlighted that due to the number of bodies issuing Notices to Mariners on the East Coast it is unreasonable to expect visiting boats to be aware of the safety zones and so therefore confirmed that guard vessels and securité messages will be important.

Applicant response – the Applicant noted RYA Scotland's response.

Marine Scotland's response – the Scottish Ministers are satisfied that the Applicant will undertake promulgation of information and also that the on-site vessel assigned to monitoring and policing duties will make contact with third party vessels to inform them of any active or soon to be active safety zones.