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## **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**

**Ossian Array**

**14 June 2023**

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## 1. Introduction

### 1.1 Background

- 1.1.1 On 9 March 2023, the Scottish Ministers received a scoping report (“the Scoping Report”) from Ossian Offshore Wind Farm Limited (“the Developer”) as part of its request for a scoping opinion relating to the Ossian Array (“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) (“MD-LOT”) 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 a marine licence 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 a marine licence 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 on 9 March 2023 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 80 kilometres ("km") south-east of Aberdeen 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 floating 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 E1 ScotWind Plan Option. The Array Area is approximately 859km<sup>2</sup>.

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

- A maximum of 270 WTGs, all with floating foundations.
- Two floating WTG foundation options are being considered: semi-submersible and tension leg platform. Three mooring configurations are considered: catenary, semi taut and taut mooring lines.
- Maximum rotor diameter of 350 metres ("m").
- Maximum hub height of 224m above Lowest Astronomical Tide ("LAT").
- Maximum blade tip height of 399m above LAT.
- Minimum blade tip clearance of 22m above the water line.
- Up to six OSPs with foundations still to be decided. Foundation options under consideration include fixed piled jacket foundations and floating

substructures (including driven and drilled piles and a variety of different embedded anchor types). Driven piles are to be used only where other solutions aren't feasible.

- The OSP topsides will be up to 130m in length, 110m width and 70m in height above LAT.
- Inter-array cabling with a maximum total cable length of 1,515km.
- Inter-array cable protection includes cable burial methods and external cable protection such as concrete mattresses and rock placement.

2.2.4 The construction of the Proposed Development is anticipated to take up to nine years, as detailed in Section 2.4 of the Scoping Report, with the operational lifetime of the Proposed Development to be 50 years, followed by a period of decommissioning.

## **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 Proposed Development. The Scottish Ministers have considered the concerns raised in the representation from East Lothian Council regarding the appropriateness of considering the offshore array area separate to the offshore export cable works and onshore works and the intention by the Developer to submit separate scoping reports to assess these elements. However, the Scottish Ministers understand that due to the ongoing National Grid 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 export cable 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 to understand the cumulative impacts of the Proposed Development. This will ensure that 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 2.3 of the Scoping Report states that the Project Design Envelope has been developed through analysis of engineering, technical and environmental constraints, but will be subject to further refinement throughout the EIA process. Although an indicative design envelope has been provided in Tables 2.1 to 2.8 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 2.4.21 to 2.4.24 of the Scoping Opinion below.

- 2.4.2 Section 2.3.4 of the Scoping Report states that the final WTG design will be selected post-consent and in consultation with relevant stakeholders. The Scottish Ministers 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 2.3.5 of the Scoping Report states that a number of floating substructure designs are currently being reviewed for the Proposed Development. A design envelope has been provided in Table 2.4 of the Scoping Report. The Scottish Ministers advise that the EIA Report must include a full and detailed description of all floating substructure designs considered within the design envelope.
- 2.4.4 Section 2.3.5 of the Scoping Report states that the type and number of anchors and moorings required will be subject to refinement upon the acquisition of geotechnical data and the conclusion of further analysis of ground conditions. The EIA Report must provide details of the anchor and mooring design options being considered within the design envelope. In section 2.3.7 of the Scoping Report the Developer has acknowledged that scour protection will be used as required to mitigate scour around the foundations. For the avoidance of doubt the use of scour protection must be assessed in the EIA Report including details on materials, quantities and location.
- 2.4.5 Section 2.3.6 of the Scoping Report states that Proposed Development will include a maximum of six OSPs. The Scottish Ministers note that the OSP parameters are detailed in the design envelope in Table 2.5 and advise that the EIA Report must include a full and detailed description of all OSP options being considered including the design, size and foundations.
- 2.4.6 Section 2.3.8 of the Scoping Report states that dynamic inter-array cables with buoyancy modules are likely to be required to allow cables to move with the foundations and adopt a 'lazy-s' configuration in the water column. Section 2.3.8 also outlines that inter-array cables will either be buried below the seabed (the method of which is yet to be determined) or will utilise external cable protection such as rock placement and concrete mattresses once cabling becomes static on the seabed. The EIA Report must provide an estimate of the anticipated likelihood of suitable burial along cable routes and be clear on the range of burial 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.

- 2.4.7 Any cable protection to be used to protect the inter-array 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 under the seabed, required for installation of inter-array cables will require consideration in the EIA Report and may 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 or existing deposit sites.
- 2.4.8 The Scoping Report at Section 2.3.8 identifies that boulders are may be present at the site of the Proposed Development. The EIA Report must provide the anticipated estimate of boulders to be cleared (including how much uncertainty may be associated with the figures presented). Clear narrative must be provided within the EIA Report to show how this has been estimated.
- 2.4.9 Sections 2.4 to 2.6 of the Scoping Report provide an overview of the proposed development phases. There is brief mention of pre-construction surveys and site investigations including geophysical surveys and unexploded ordnance (“UXO”) surveys within Section 2.4. The Scottish Ministers advise that the EIA Report must describe and assess the environmental effects, including in-combination effects, of the range of surveys which may be required such as geophysical and geotechnical survey activities and UXO clearance. The EIA Report must also include 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 2.5 of the Scoping Report details that operation and maintenance activities will be considered within 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

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

cumulative impacts with neighbouring developments. Such proposed activities may require to be permitted by a marine licence issued for the Proposed Development, unless an exemption applies.

- 2.4.11 Section 2.6 of the Scoping Report states that EIA Report will provide an overview of the estimated decommissioning events and assessment of the anticipated 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 were content to consult on the scoping opinion without coordinates included. However, the coordinates must be included alongside the EIA Report detailing the outline of the offshore turbine array.
- 2.4.14 The Scottish Ministers direct the Developer to the NatureScot representation on the need to understand potential impacts holistically at a wider ecosystem scale, rather than just as discrete individual receptor assessments. The Scottish Ministers therefore advise that potential impacts should be given consideration 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.
- 2.4.15 Wet storage is also a potentially significant impact pathway in respect of the Proposed Development identified by NatureScot in its representation. The Scottish Ministers advise that, if there is potential for wet storage of floating WTGs (whether fully assembled or in component parts), this must be detailed and consideration of impacts on receptors must be addressed within the EIA Report and HRA.
- 2.4.16 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.

- 2.4.17 The Scottish Ministers acknowledge the draft stakeholder engagement plan at Appendix 1 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 1.3. The Scottish Ministers further highlight the representation from NatureScot advising that it does not envisage the need for a lengthy 'roadmap' process and advise that the Developer consider its request for engagement only on specific technical topics which aren't covered by published guidance.
- 2.4.18 With 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.
- 2.4.19 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.
- 2.4.20 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 3.6 GW for the Proposed Development (alongside the additional capacity proposed by other E1 site developers, totalling over 4 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*

- 2.4.21 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 Section 4.3.3 of the Scoping Report.
- 2.4.22 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.
- 2.4.23 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.
- 2.4.24 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*

- 2.4.25 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 3 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.

- 2.4.26 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 Vessel Management Plan, Fisheries Management and Mitigation Strategy, a Marine Pollution Contingency Plan, a Marine Mammal Mitigation Protocol and a mitigation commitment register as an appendix to the Scoping Report, summarising the mitigation 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.

### **3.4 Risks of Major Accidents and/or Disasters**

- 3.4.1 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.
- 3.4.2 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.
- 3.4.3 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.

## 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 16 March 2023. Following consultation extensions, the last response was received on 4 May 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 Airport**
- Department for Business, Energy and Industrial Strategy (“BEIS”)
- Bellrock Offshore Wind
- **British Telecom (“BT”) (Radio Network Protection Team)**
- **UK Chamber of Shipping**
- Civil Aviation Authority
- Community Councils:
  - Arbroath Community Council
  - Berwick Upon Tweed Town Council
  - Broughty Ferry Community Council
  - Burntisland Community Council
  - Carnoustie Community Council
  - Dalgety Bay and Hillend Community Council
  - Kingsbarns Community Council
  - *North Berwick Community Council*
  - Prestonpans Community Council
  - Tranent & Elphinostone Community Council
- Communities Inshore Fisheries Alliance
- Crown Estate Scotland
- **Cruising Association (“CA”)**
- *Department of Agriculture and Rural Development of Northern Ireland (“DAERA”)*
- **Dee District Salmon Fishery Board (“Dee DSFB”)**
- *Edinburgh Airport*
- Esk District Salmon Fishery Board
- The Fisheries Liaison with Offshore Wind and Wet Renewables Group
- Fisheries Management Scotland
- Forth District Salmon Fishery Board
- *Forth Ports*
- Health and Safety Executive
- **Historic Environment Scotland (“HES”)**



- Inshore Fisheries Group- North & East Coast Regional
- Joint Radio Company (“JRC”)
- Local Authorities:
  - **Aberdeenshire Council**
  - **Angus Council**
  - Dundee Council
  - **East Lothian Council**
  - *Fife Council*
  - *Northumberland County Council*
  - Scottish Borders Council
- Marine Planning & Policy
- Marine Safety Forum
- Marine Directorate – Compliance (Peterhead Fishery Office)
- Marine Directorate – Compliance (Anstruther Fishery Office)
- **Maritime and Coastguard Agency (“MCA”)**
- **Ministry of Defence (“MOD”) - Defence Infrastructure Organisation (“DIO”)**
- Morven Offshore Wind
- **National Air Traffic Services (“NATS”)**
- **Natural England**
- **NatureScot**
- **Northern Lighthouse Board (“NLB”)**
- National Trust for Scotland
- **North Sea Transition Authority (“NSTA”)**
- Oil and Gas UK
- River Tweed Commission
- Royal National Lifeboat Institution
- **Royal Yachting Association (“RYA”)**
- **Royal Society for the Protection of Birds (“RSPB”) Scotland**
- Scottish Canoe Association
- Scottish Creel Fishermen’s Federation
- Scottish Fishermen’s Organisation
- Scottish Government Planning
- **Scottish and Southern Electricity Networks (“SSEN”)**
- **Scottish Fishermen’s Federation**
- Scottish Surfing Federation
- **Scottish Water**
- Scottish Wildlife Trust
- **Scottish Environmental Protection Agency (“SEPA”)**
- Sports Scotland
- Surfers Against Sewage
- Tay District Salmon Fishery Board

- Transport Scotland Ports and Harbours
- Visit Scotland
- *Whale and Dolphin Conservation Society*

4.1.2 Specific advice was sought from Marine Directorate Science (“MSS”), the Marine Directorate – Marine Analytical Unit (“MAU”) and Transport Scotland (“TS”).

## **4.2 Responses received**

4.2.1 From the list above a total of 29 responses were received. Advice was also provided by MSS, MAU and TS. 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, MSS and TS 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 identified within Section 5.1.2 of the Scoping Report. The Scottish Ministers note that the baseline for physical processes has not yet been fully characterised and that consideration to water column processes, specifically mixing and stratification, is required. The Developer must fully address the representation from MSS in the EIA Report. In addition, in relation to data sources, the Scottish Ministers recommend that the advice provided by MSS is fully considered.

5.2.2 In Table 5.3 of the Scoping Report the Developer summarises the potential impacts to physical processes during the different phases of the Proposed Development. The Scottish Ministers broadly agree with the impacts scoped out of the EIA Report with the exception of the four impact pathways discussed in section 5.2.3 below.

5.2.3 The Scottish Ministers disagree that 'Increase in SSCs and associated deposition due to operation and maintenance activities', 'Impacts to seasonal stratification due to the presence of infrastructure' and 'Impacts to the sediment transport and sediment transport pathways due to the presence of infrastructure' are scoped out of the EIA Report. These three impact pathways must be scoped in for further assessment. Any justification for scoping this receptor out, must be included within the EIA Report. In addition, 'Impacts to the wind field and wave and tidal regimes, due to the presence of infrastructure' must be scoped in in relation to how the wind field may change. These views are supported by the MSS advice and the Scottish Ministers recommend that the advice is fully considered and implemented within the EIA Report.

5.2.4 The Developer has summarised potential cumulative effects in Section 5.1.9 of the Scoping Report and outlines that potential impacts on physical processes are generally localised to the installed infrastructure. However, the Scottish Ministers advise that cumulative impacts on stratification should be considered qualitatively in the EIA Report in line with MSS advice. The inclusion of the

potential effects highlighted in Section 5.2.3 also need to be considered for any cumulative impacts. In addition, potential transboundary impacts should be reconsidered in light of the impacts advised to be scoped in by MSS.

### **5.3 Subsea Noise**

- 5.3.1 The Scottish Ministers, in line with NatureScot representation, are broadly content with the Developer's proposed approach of not defining a specific study area as noted in Section 5.2.2 of the Scoping Report and that the baseline data gathered for the assessment is appropriate. In addition, the Scottish Ministers support the proposed approach to assessment based on absolute noise criteria.
- 5.3.2 In Table 5.5 of the Scoping Report the Developer summarises the potential impacts of subsea noise during the different phases of the Proposed Development. The Scottish Ministers broadly agree with the impacts scoped in to and out of the EIA Report.
- 5.3.3 In regards to the subsea noise modelling methodology, the Scottish Ministers, in line with NatureScot representation support the proposed approach, however, advise that bottlenose dolphin, harbour seal and humpback whale are added to the list of receptors. Furthermore, consideration should be given to the MSS commissioned ScotMER report on Energy Conversion Factors in Underwater Radiated Sound from Marine Piling to assist in delivering a more realistic modelled noise.
- 5.3.4 In line with the NatureScot representation both a worst case scenario of all piled structures and a separate realistic worst case scenario should be assessed. Agreement of parameters of the realistic worst case scenario must be agreed with NatureScot. The Scottish Ministers also note NatureScot's advice to explore and utilise alternative anchoring techniques for the WTGs and OSPs that do not require pile driven foundations, with the aim of minimising subsea noise. The Scottish Ministers request that the Developer considers this advice when compiling the EIA Report.
- 5.3.5 In regards to cumulative impacts, the Scottish Ministers, in line with NatureScot representation, advise the use of the Cumulative Effects Framework in addition to collaboration with neighbouring developments with the aim of reducing and mitigating the potential impacts of subsea noise on marine mammal populations.
- 5.3.6 Finally, the Scottish Ministers, highlight the NatureScot representation recommending that noise monitoring is undertaken at all stages of the Proposed Development.

## **5.4 Airborne Noise**

- 5.4.1 The Scottish Ministers are broadly content with the impacts identified, in Table 5.7 of the Scoping Report however draw the Developer's attention to the representation from East Lothian Council regarding a potential increase in airborne noise from helicopter flights and advise that the Developer should engage directly with East Lothian Council regarding whether an assessment of any significant increase in airborne noise should be included in the EIA Report. Should this be the case, the Scottish Ministers advise that the study area should be broadened to include helicopter routes.

## **5.5 Offshore Air Quality**

- 5.5.1 The Scottish Ministers are broadly content with the impacts identified within Table 5.11 of the Scoping Report, however again reference the East Lothian Council representation regarding potential air quality impacts resulting from helicopter flights. The Developer should engage directly with East Lothian Council regarding whether an assessment of any significant impacts to air quality should be included in the EIA Report. Should this be the case, the Scottish Ministers advise that the study area should be broadened to include helicopter routes.

## **5.6 Climatic Effects**

- 5.6.1 The Scottish Ministers are largely content with the Developer's approach in assessing climatic effects change and Green House Gases ("GHG") within section 5.5 of the Scoping Report, noting that the IEMA Environmental Impact Assessment Guide "Assessing Greenhouse Gas Emissions And Evaluating Their Significance" 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 highlight 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, East Lothian Council and SFF representations regarding climatic factors and GHG assessment should be fully addressed by the Developer within the assessment.
- 5.6.2 In addition to the GHG assessment, the Scottish Ministers, direct the Developer to 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, any proposed wet storage areas as well as an expanded assessment for benthic ecology focusing on potential impacts on marine sediments.

## **5.7 Benthic Subtidal Ecology**

- 5.7.1 The Scottish Ministers, in line with NatureScot representation, advise that the array benthic subtidal ecology study area as described in section 6.1.2 of the Scoping Report is re-defined as the site boundary plus one tidal excursion and that consideration should also be given to narrowing the regional benthic ecology study area.
- 5.7.2 The Scottish Ministers are broadly content with the data sources used to characterise the baseline as listed by the Developer in Section 6.1.2 of the Scoping Report, however highlight the representation from NatureScot and recommend the use of environmental DNA (“eDNA”) surveys within the area of the Proposed Development to expand information on benthic subtidal ecology.
- 5.7.3 Table 6.4 of the Scoping Report summarises the impacts to be scoped in to the EIA Report for the benthic subtidal ecology for each phase of the Proposed Development. The Scottish Ministers agree with the impacts scoped into the EIA Report, however, in line with NatureScot representation, advise that effects to benthic subtidal ecology due to electromagnetic fields, increased risk of introduction and spread of Invasive Non-Native Species (“INNS”) and increased suspended sediment concentrations and associated deposition should be scoped into the EIA Report. The Scottish Ministers further advise that the representation from SFF regarding boulder relocation and accidental pollution must be fully considered by the Developer.
- 5.7.4 In regards to the approach to assessment, the Scottish Ministers advise that the 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 being considered. This view is in line with NatureScot representation.
- 5.7.5 In regards to mitigation and monitoring, the full range of mitigation measures and published guidance should be considered within the EIA Report, including those specifically outlined by NatureScot in its representation. If any sensitive habitats are identified at a later date, micro-siting or other mitigation will be required. The Scottish Ministers further advise that monitoring should be discussed in the EIA Report, including consideration of EMF and INNS monitoring. Consideration should also be given to the SFF representation regarding habitat loss and disturbance.
- 5.7.6 In regards to the cumulative impacts, the Scottish Ministers advise, in line with the NatureScot representation, that the Developer should give consideration in the EIA Report to the potential for cumulative impacts across a wider area than

impacts which spatially overlap with those of the Proposed Development given wider offshore wind development across the region. This may include the potential for 'network' or 'barrier' effects to migrating species.

- 5.7.7 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.

## **5.8 Fish and Shellfish Ecology**

- 5.8.1 The Scottish Ministers are broadly content with the proposed study areas, however advise the Developer to consider identifying a smaller study area using the recommended methods detailed in the NatureScot representation.
- 5.8.2 In regards to baseline environment as detailed by the Developer in Section 6.2.3 and Appendix 8 of the Scoping Report the Scottish Ministers advise that the NatureScot advice in relation to fish assemblage and shellfish assemblage must be fully implemented in the EIA Report. Additionally, the Scottish Ministers recommend eDNA surveys are carried out to gain information on PMF species and prey fish present at the site of the Proposed Development. This view is supported by the NatureScot representation.
- 5.8.3 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, and to consider the data source in relation to salmon and sea trout smolt tracking highlighted in the Dee DSFB representation.
- 5.8.4 In Table 6.9 of the Scoping Report the Developer summarises the impact pathways to be scoped in for fish and shellfish ecology for each phase of the Proposed Development. The Scottish Ministers largely support the proposed approach however advise that subsea noise should be scoped in during the operation and maintenance phase in line with the NatureScot and SFF representations, and that habitat loss and disturbance should be scoped in for pre-construction preparation works. Additionally, the Scottish Ministers highlight NatureScot's representation on sediment related impacts and advise that these should be scoped in, particularly in relation to smothering of herring spawning grounds. The SFF representation considers further impacts should be scoped in and advises on the importance of spawning grounds in the area which the Scottish Minister advise must be fully considered by the Developer in the EIA Report.
- 5.8.5 The Scottish Ministers support scoping in of EMF and the colonisation of hard structures, however, in line with the NatureScot representation, advise that

consideration of INNS and how this will be monitored and recorded should be detailed in the EIA Report with clear links to fish and shellfish identified in the benthic ecology INNS assessment to be presented in the Fish and Shellfish chapter. The NatureScot representation regarding EMF levels in relation to cable burial must also be fully addressed within the EIA Report.

- 5.8.6 Clear links between the marine mammal and offshore ornithology assessments in relation to prey availability should be made to the fish and shellfish assessment within the EIA Report. The advice and data sources provided in the NatureScot representation in relation to prey species and impacts to spawning and nursery grounds should be fully considered and addressed by the Developer in the EIA Report.
- 5.8.7 With regards to the approach to assessment set out in section 6.2.8, the Scottish Ministers are largely content, however advise that assessment should quantify where possible the likely impacts to key 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 should be included.
- 5.8.8 The Scottish Ministers are broadly content with the designed mitigation measures described in section 6.2.5 of the Scoping Report and advise that the full range of mitigation measures and published guidance are considered in the EIA Report. Information on proposed fish and shellfish monitoring should be outlined in the EIA Report. This is a view supported by NatureScot.
- 5.8.9 The Scottish Ministers agree that subsea noise should be scoped into the cumulative assessment, however, advise that further cumulative impacts should not be discounted at this stage. In particular the Scottish Ministers highlight that consideration should be given to displaced fishing activity for habitat loss/ change as outlined in the NatureScot representation.
- 5.8.10 With regards to the HRA Screening Report, the Scottish Ministers agree with the advice within the NatureScot representation that migratory fish should currently be assessed through the EIA process and not through the HRA process. However, the Developer should engage with the Scottish Ministers and NatureScot in regards to any change in how diadromous fish should be assessed through EIA and HRA as a result of ongoing research in this area.

## **5.9 Marine Mammals**

- 5.9.1 The Scottish Ministers are broadly content with the study areas as described in section 6.3.2 of the Scoping Report and support the baseline data sources as listed in Appendix 9, Table 9.1.



- 5.9.2 With regards to baseline characterisation, in line with the NatureScot representation, the Scottish Ministers advise against apportioning unidentified marine mammal sightings during Digital Aerial Surveys (“DAS”) to the most abundant identified species and/or groups, to prevent introducing bias to the DAS results. The highest density estimate for each species should be used from site-specific surveys and publicly available density estimates and the advice from NatureScot in this regard must be fully addressed in the EIA Report.
- 5.9.3 Table 6.13 of the Scoping Report summarises the potential impacts to marine mammals identified during different phases of the Proposed Development. In addition to the impact pathways identified to be scoped into the EIA Report, the Scottish Ministers advise that underwater noise from floating turbines and dynamic cables during the operational phase must be scoped into the EIA Report. Additionally due to the limited information regarding marine mammal interaction with buried cables, the impacts of EMF from subsea electrical cabling should also be scoped into the EIA Report during the operation and maintenance phase. This view is supported by the NatureScot representation which should be fully addressed by the Developer in the EIA Report.
- 5.9.4 Additionally, the Scottish Minister currently advise in relation to UXO clearance that, until the outcomes of the deflagration campaign in Scottish waters are available, both high order and low order clearance should be modelled to ensure that the worst case scenario is assessed. The Scottish Ministers direct the Developer to the joint interim position statement outlined in the NatureScot representation in this regard. In relation to subsea noise generated during piling, the Scottish Ministers advise that bottlenose dolphin and harbour seal are scoped in for assessment until noise modelling for piling indicates that they can be ruled out. Humpback whale should also be scoped in but this assessment may be qualitative in nature. This view is supported by the NatureScot representation
- 5.9.5 The Scottish Minister are broadly content with the approach to assessment in section 6.3.8 of the Scoping Report however advise that the additional guidance identified by NatureScot should be incorporated.
- 5.9.6 In regards to mitigation and monitoring, the Scottish Ministers are content with the measures detailed in section 6.3.5 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. In line with the NatureScot representation, the Scottish Ministers advise that noise monitoring through all stages of the Proposed Development must be considered in the EIA Report.

- 5.9.7 The Scottish Ministers are broadly content with the approach to the cumulative assessment as described in section 6.3.9 of the Scoping Report. The Developer is encouraged to use the Cumulative Effects Framework and collaborate with neighbouring offshore wind developers to reduce the potential cumulative impacts from subsea noise.
- 5.9.8 Transboundary effects will need to be considered within the EIA Report for cetacean species but not for seal species. The Developer should seek further advice from NatureScot in regard to transboundary effects when initial impact assessments have been concluded.
- 5.9.9 In regard to the HRA Screening, in line with the NatureScot representation, the Scottish Ministers advise the Moray Firth SAC should remain screened into the assessment in respect of bottlenose dolphin until noise modelling is completed, after which the Developer should engage with NatureScot to agree an approach to assessment. The Berwickshire and North Northumberland Coast SAC for grey seal and Southern North Sea SAC for harbour porpoise should also remain screened in for further assessment in line with the Natural England advice dated 05 June 2023 (unless later agreed with Natural England that these can be screened out). The remaining UK protected sites and associated marine mammal qualifying features should be scoped out of the assessment.

## **5.10 Offshore Ornithology**

- 5.10.1 The Scottish Ministers are content with the proposed study area. In regards to the data sources used to characterise the baseline as listed by the Developer in Section 6.4.3 of the Scoping Report, the Scottish Ministers agree with the NatureScot representation that the key species to be scoped into the EIA Report should be informed by the 24 month DAS campaign. When presenting the DAS data and calculating abundance in the EIA Report, explanation is required on how the standard deviations have been calculated in line with the NatureScot representation. The Developer should engage further with NatureScot regarding the Year 1 interim report and baseline characterisation reports and should clearly detail how any gaps in survey coverage have been addressed.
- 5.10.2 Table 6.16 of the Scoping Report summarises the potential impacts on offshore ornithology for each phase of the Proposed Development. The Scottish Ministers broadly agree with the impacts to be scoped into the EIA Report, in line with NatureScot, RSPB Scotland and Natural England representations.
- 5.10.3 In regards to the approach to assessment described at Section 6.4.7 of the Scoping Report, the Scottish Ministers advise that the NatureScot representation regarding density estimation, seasonal definitions, seabird foraging ranges, populations and apportioning, distributional responses, collision risk modelling

and population viability modelling must be fully implemented by the Developer. The Scottish Ministers further advise, in relation to the displacement assessment that no gradient of impact of displacement level should be applied to the buffer zone and that the same displacement and mortality rates should be applied throughout the project area and any buffer area, as outlined in the Natural England representation dated 20 April 2023 (“the April NE representation”) and in line with the Joint SNCB Interim Displacement Advice Note. The Scottish Ministers highlight the April NE representation regarding stable age structure, sabbatical rates and assessment methodologies for kittiwake and gannet. This difference in approach should be acknowledged when compiling the EIA Report. Finally, in line with the April NE representation, the Scottish Ministers note the need for a precautionary assessment of impacts of highly pathogenic avian influenza in seabirds and highlight the Natural England guidance on this topic and future updates to the NatureScot guidance notes.

- 5.10.4 In addition, the Scottish Ministers highlight the representation from RSPB Scotland, in particular regarding the assessment of gannets. While the Scottish Ministers advise that the RSPB Scotland representation should be considered in full 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.
- 5.10.5 Section 2.3.4, paragraph 89 of the Scoping Report outlines that the lower blade tip height has yet to be defined but will be greater than 22m above the water line. The Scottish Ministers highlight the representation from RSPB Scotland which recommends that the minimum distance between the lower blade tip height and the LAT is defined early in the design process as this is key in avoiding and mitigating seabird collision risk. In addition, RSPB Scotland request the defined airgap is in excess of the minimum required for navigational purposes. The Scottish Ministers request that the Developer considers the recommendations from RSPB Scotland when compiling the EIA Report.
- 5.10.6 In relation to mitigation and monitoring, the Scottish Ministers are content with the measures detailed in section 6.4.4 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. Designed measures should be kept under review as the assessment progresses and there should be clear differentiation between mitigation and any proposed compensation measures if a derogation case is required. Further information on proposed ornithological monitoring must be provided in the EIA Report. This advice is informed by the representation from NatureScot.
- 5.10.7 In regards to cumulative impacts, the Scottish Ministers are broadly content with the proposed approach but advise, in line with NatureScot representation,

that multiple population viability models should be run with and without the proposed Berwick Bank offshore wind farm and that the cumulative assessment is discussed further with the Marine Directorate and NatureScot to ensure a comprehensive assessment, encompassing both worse case and realistic worse case scenarios.

- 5.10.8 The Scottish Ministers acknowledge Appendix 3 of the Scoping Report which states that transboundary impacts may arise during the non-breeding season and advise that the Developer should engage further with NatureScot and MD-LOT on such impacts when the baseline report has been finalised.
- 5.10.9 In regards to the HRA Screening Report, the Scottish Ministers advise that in relation to connectivity and identification of key sites for breeding seabirds, the discrepancies identified by NatureScot in relation to Tables 4.3 and 4.4 of the Scoping Report must be fully addressed and the likely significant effect (“LSE”) matrix tables and lists of sites and qualifying features to be taken forward for determination of LSE and further assessment must be updated accordingly. The Scottish Ministers further advise that common guillemot from the Flamborough and Filey Coast SPA is screened in for further assessment for impacts 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 described in the April NE representation.
- 5.10.10 The Scottish Ministers advise that no species are screened out of the HRA for any phase of the Proposed Development until second year flight data is considered, in line with the NatureScot representation. Further consideration of associated works during all phases of the Proposed Development also needs to be given before LSE can be ruled out, including wet storage and vessel movements, as identified by NatureScot. The Scottish Ministers direct the Developer to NatureScot’s assessment requirements in relation to associated vessel movements and advise that these must be fully implemented. In this regard, the Outer Firth of Forth and St Andrews Bay Complex SPA should not be screened out until further details relating to the construction and operation and maintenance ports are known due the risk of disturbance from vessels transiting the SPA.
- 5.10.11 In regards to the operation and maintenance phase of the Proposed Development, Scottish Ministers, in line with NatureScot representation, advise that the fitting of lighting to the array needs to be assessed in respect to nocturnal species through HRA. Furthermore, if assessment concludes LSE by means of disturbance and displacement, this species should be assessed across both breeding and non-breeding periods, rather than a single period. The Scottish Ministers also highlight NatureScot’s representation regarding predator/prey

interactions and advise that full consideration must be given to associated impacts in accordance with NatureScot advice.

- 5.10.12 In regards to the HRA in-combination assessment, Scottish Ministers, in line with NatureScot advice, request the Developer provides clarity as to why in-combination effects for geese and migratory water bird qualifying features have been screened out for the construction and decommissioning phases of the Proposed Development in relation to collision and barrier to movement impacts and advise that this should remain screened in unless confirmed by NatureScot.

## **5.11 Commercial Fisheries**

- 5.11.1 The Scottish Ministers are content with the proposed study area. The Scottish Ministers are also broadly content with the data sources used to characterise the baseline as listed by the Developer in Section 7.1.3 and Appendix 10 of the Scoping Report. The Scottish Ministers however highlight the representation from the SFF who request that fishing industry records are reviewed alongside the baseline data already presented. In addition Scottish Ministers, in line with MSS advice, advise the Developer to include Marine Directorate and Marine Management Organisation surveillance sightings data to further improve the baseline fisheries data obtained from the study area.
- 5.11.2 In Table 7.4 of the Scoping Report the Developer summarises the impacts to be scoped in for commercial fisheries for each phase of the Proposed Development. The Scottish Ministers agree with the impacts scoped into the EIA Report, however, highlight the SFF representation and advise, for the avoidance of doubt that the worst case scenario is assessed in relation to long term loss or restricted access to fishing grounds.
- 5.11.3 As regards monitoring and mitigation, the Scottish Ministers highlight the representation from the SFF as regards monitoring of the following impacts: temporary loss or restricted access to fishing grounds, long term loss or restricted access to fishing grounds, displacement of fishing activity in other areas and interference with shipping activity. The Scottish Ministers advise that the representation from the SFF must be fully considered by the Developer in the EIA Report. 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.

- 5.11.4 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 and Fife Council representations.

## **5.12 Shipping and Navigation**

- 5.12.1 The Scottish Ministers are content with the study area identified in Section 7.2.2 of the Scoping Report however note the representation from UKCoS which recommends a wider routeing study area of 50 nautical miles when considering the cumulative impact assessment with regards to routeing impacts in combination with other developments.
- 5.12.2 With regards to the shipping and navigation baseline, in line with the representation from the MCA, the Scottish Ministers are content that that the two separate 14 day periods of Automatic Identification System (“AIS”) data set out in the Scoping Report meets the standard MGN 654, however highlight the advice from UKCoS that additional AIS data over a prolonged period is obtained to assist with analysis of seasonal variation and weather routeing should be considered in the EIA Report. The Scottish Ministers advise that the Developer must engage further with the MCA and UKCoS to reach a suitable agreement on the provision of AIS data and document the rationale for the final approach within the EIA Report. Additionally, the Scottish Ministers highlight the representation from the CA regarding the limitations of AIS data for smaller craft which should be taken into consideration in the EIA Report.
- 5.12.3 Table 7.7 of the Scoping Report summarises the potential impacts on shipping and navigation for each phase of the Proposed Development. The Scottish Ministers agree with the impacts scoped into the EIA Report, however the Developer is directed to the advice from the UKCoS that loss of station, interference with navigation, communications and positioning-fixing equipment and reduction of SAR capability should be scoped into the EIA Report during construction and decommissioning phases in addition to operation and maintenance. The UKCoS also identifies additional receptors in respect of floating offshore wind which the Scottish Ministers advise should be scoped into the EIA Report. Additionally, for the avoidance of doubt, the Developer must ensure that each of the possible impacts on navigational issues, including routing and effects on shipping, outlined in the MCA representation are addressed within the EIA Report. Finally, the Scottish Ministers highlight the RYA representation around failure of Aids to Navigation marking the devices which should be fully addressed in the EIA Report.
- 5.12.4 With regards to approach to assessment, the Scottish Ministers confirm that, in line with NLB and MCA representations, the Developer will be required to submit

a Navigational Risk Assessment in accordance with MGN 654, accompanied by a detailed MGN 654 checklist. Hydrographic surveys should fulfil the requirements set out in Annex 4 of MGN 654. In addition, the Scottish Ministers direct the Developer to the representation from the UKCoS and advise that the additional documentation highlighted should be considered when assessing the impact on shipping and navigation from the Proposed Development.

- 5.12.5 The Scottish Ministers also highlight the MCA representation regarding 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.
- 5.12.6 Representation from the CA notes the preference of smaller craft to traverse wind farm arrays throughout all stages of its development due to the reduced risk from traversing busy shipping channels and that sailing boats don't necessarily follow direct routes – this should be taken into consideration in the EIA Report.
- 5.12.7 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.
- 5.12.8 With regards to the proposed mitigation in Section 7.2.5 of the Scoping Report, the Scottish Ministers highlight the representation from the RYA regarding its objection to operational safety zones, which should be taken into consideration when finalising the proposed designed in measures. In line with the representation from the MCA, the Developer should note that compliance with regulatory expectations for floating infrastructure, as stated in Section 7.2.5, is required and Third-Party Verification of the mooring arrangements will also be required.
- 5.12.9 With regard to potential cumulative effects summarised in Section 7.2.8 of the Scoping Report, the Scottish Ministers are broadly content with the approach proposed 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 which must be addressed in the EIA Report. In addition, the Scottish Ministers highlight the Cruising Association representation regarding increased concentration of traffic and advise that this must be fully considered in the EIA Report.

### **5.13 Aviation, Military and Communications**

- 5.13.1 The Scottish Ministers are broadly content with the study area as defined in Section 7.3.2 of the Scoping Report and that the baseline data gathered for the assessment is appropriate.
- 5.13.2 In Table 7.9 of the Scoping Report the Developer summarises the potential impacts to Aviation, Military and Communications during the different phases of the Proposed Development. The Scottish Ministers largely agree with the impacts scoped in to and out of the EIA Report however highlight the MOD representation in relation to the military Practice and Exercise Areas.
- 5.13.3 The Scottish Ministers also highlight 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 to detect real aircraft. NATS has also advised that the Proposed Development will likely have unacceptable impacts to Prestwick Air Traffic Control (“ATC”) and Aberdeen ATC. This view is supported in the representation from Aberdeen Airport. The Scottish Ministers therefore recommend the Developer engage further with NATS on these points and advise that these impacts must be assessed, and appropriate mitigation proposed, in the EIA Report.
- 5.13.4 The Scottish Ministers highlight the representation from MOD DIO, which acknowledges the potential for the proposed development to impact the operation and capability of the Air Defence Radars at Royal Air Force (“RAF”) Buchan and RAF Brizlee Wood. The Scottish Ministers, in line with MOD DIO advice, therefore advise that these impacts must be assessed, and appropriate mitigation proposed, in the EIA Report.
- 5.13.5 The Scottish Ministers, in line with MOD DIO representation, notes that the proposed development occupies Low Fly Area 14. In regards to air safety, the Scottish Ministers advise that the MOD accredited aviation safety lighting in accordance with Civil Aviation Authority Air Navigation Order 2016 is considered in the EIA Report.

### **5.14 Marine Archaeology**

- 5.14.1 The Scottish Ministers are broadly content with the study area as defined in Section 7.4.2 of the Scoping Report and that the baseline data gathered for the assessment is appropriate. This view is supported by Aberdeenshire Council and HES.



- 5.14.2 The Scottish Ministers, in line with HES representation, advise that the potential impacts to Marine Archaeology, as outlined in Table 7.13 of the Scoping Report, should not be scoped out of the EIA Report and that further archaeological assessment is required. The Scottish Ministers therefore advise that these impacts must be assessed in the EIA Report in line with HES advice. The Scottish Ministers agree that impacts to onshore designated assets can be scoped out as per the Aberdeenshire Council and HES representations.
- 5.14.3 The Scottish Ministers note the representation from HES, which highlights that further evidence on designed in measures which are suitable to mitigate any potential effects on the marine archaeological receptors from the Proposed Development is required in the EIA Report. The Scottish Ministers advise that the representation from HES must be fully addressed by the Developer.

## **5.15 Seascape, Landscape and Visual Resources**

- 5.15.1. The Scottish Ministers are content with the study area identified in Section 7.5.2 and baseline data presented outlined in Section 7.5.3 of the Scoping Report.
- 5.15.2. In Section 7.5.6 of the Scoping Report the Developer has provided a list of viewpoints based upon the key seascape, landscape and visual receptors identified in the zone of theoretical visibility study area.
- 5.15.3. In Table 7.15 of the Scoping Report the Developer has summarised the potential impacts on seascape, landscape and visual receptors and proposes to scope out all potential impacts during each phase of the development from the EIA Report as detailed in Table 7.16. In line with the representations from NatureScot, Aberdeenshire Council, East Lothian Council and Angus Council, the Scottish Ministers agree with the Developer's proposal to scope this receptor out of the EIA Report on the basis that the distance from shore means no adverse impacts are likely.
- 5.15.4. For completeness, the Scottish Ministers highlight the representations from East Lothian Council and Angus Council regarding additional viewpoints and wirelines analysis should any future supporting Seascape, Landscape and Visual Impact Assessments be developed for the Proposed Development.

## **5.16 Infrastructure and Other Users**

- 5.16.1 The Scottish Ministers are content with the data sources used by the Developer to inform the baseline for this receptor. In Table 7.18 of the Scoping Report the Developer summarises the potential impacts to Infrastructure and Other Users during different phases of the Proposed Development. The Scottish Ministers emphasise the importance of engaging with other marine users, including

developers of ScotWind projects, throughout all phases of the Proposed Development.

- 5.16.2 In Table 7.19 of the Scoping Report, impacts proposed to be scoped in for Infrastructure and Other Users during the different phases of the Proposed Development. The Scottish Ministers agree with the impacts scoped in to the EIA Report however highlight the representations from the Cruising Association and Royal Yachting Society and advise that these must be fully considered in the EIA Report. Any relevant links to the Shipping and Navigation assessment should be clearly defined in the EIA Report. The Scottish Ministers further highlight the representation from the NSTA which advises the Developer to be aware of the potential impacts from future carbon storage activities near to the array location.
- 5.16.3 For completeness the Scottish Ministers note the representation from SSEN which outlines nearby licensed and future subsea transmission infrastructure. The Scottish Ministers advise that consideration is given to the representation from SSEN and its nearby transmission infrastructure.

## **5.17 Offshore Socio-Economics**

- 5.17.1 The Scottish Ministers are broadly content with the study area and guidance documentation identified within the Scoping Report.
- 5.17.2 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 application. It is recommended that the SEIA includes detailed descriptions of the baseline, is transparent in its methodological choices and assumptions and includes details of primary data to assess the social impacts, in addition to the economic impacts, for all phases of the Proposed Development.
- 5.17.3 In regards to baseline data, the Scottish Ministers, in line with the MAU advice, advise that the Developer assesses potential impacts on local communities as a result of the Proposed Development and outline how baseline data will be collected to assess any impact in the future. This is to include desk study methods and primary data collection from local communities who may be impacted by the Proposed Development as well as expert stakeholders.
- 5.17.4 In Table 7.22 of the Scoping Report the Developer summarises the potential impacts to Offshore Socio-Economics during the different phases of the Proposed Development. The Scottish Ministers agree with the impacts scoped in to the EIA Report, however, advise that any potential impacts identified through the data collection described in paragraph 5.17.3 of this Scoping Opinion must be scoped into the SEIA.

- 5.17.5 With regards to the proposed assessment approach, the Scottish Ministers highlight the advice from MAU which notes that magnitude and significance methodology is not always adequate for assessing social impacts on small communities. The Scottish Ministers therefore advise that the Developer gives due consideration to methodologies used to assess the significance of social impacts.
- 5.17.6 In relation to social impacts, the Scottish Ministers, in line with MAU advice, advise the Developer to carry out comprehensive social impact research once local areas are identified which should note how communities were identified along with outlining the methodologies for community engagement, capturing concerns (including of different groups) and data analysis.
- 5.17.7 In relation to economic impacts, the Scottish Ministers, in line with advice from MAU, advise that the proposed approach to assess employment impacts should be expanded to include information about the types of jobs that will be created, as a result of the Proposed Development, and how they compare to existing jobs in the study area. This view is also supported by SFF. In addition, the Scottish Ministers agree with MAU that a detailed description of the methodology used to assess economic impacts must be included in the EIA, outlining the methodological approach taken and any key assumptions that underpin any estimates.

## **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 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 and Regulatory Approval

### 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 principle 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, 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.

Rebecca Bamlett

14 JUNE 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*