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Marine Scotland - Licensing Operations Team Scoping Opinion

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

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

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

and

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

West of Orkney Windfarm

29 June 2022

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1. Introduction

1.1 Background

- 1.1.1 On 2 March 2022, the Scottish Ministers received a scoping report (“the Scoping Report”) from Offshore Wind Power Limited (“the Developer”) as part of its request for a scoping opinion relating to West of Orkney Windfarm (“the Proposed Development”). The Scottish Ministers considered the content of the Scoping Report as sufficient and in accordance with regulation 14 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 MW Regulations”), 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”), all 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 Scotland in-house expertise and experience. This Scoping Opinion identifies the scope of impacts to be addressed and the method of assessment to be used in the Environmental Impact Assessment Report (“EIA Report”) for the Proposed Development.
- 1.1.3 The Scottish Ministers, in adopting this Scoping Opinion, have, in accordance with the EIA Regulations, taken into account the information provided by the Developer, in particular, information in respect of the specific characteristics of the Proposed Development, including its location and technical capacity and its likely impact on the environment. In addition, the Scottish Ministers have taken into account the representations made to them in response to the scoping consultation they have undertaken.
- 1.1.4 In examining the EIA Report, and any other environmental information, the Scottish Ministers will seek to reach an up to date reasoned conclusion on the significant effects on the environment from the Proposed Development. This reasoned conclusion will be considered as up to date if the Scottish Ministers are satisfied that current knowledge and methods of assessment have been taken account of. For the avoidance of doubt, this Scoping Opinion does not preclude the Scottish Ministers from requiring the Developer to submit additional information in connection with any EIA Report submitted with an application for consent under section 36 (“s.36 consent”) of The Electricity Act 1989 (“the 1989 Act”) and marine licences under The Marine (Scotland) Act

2010 (“the 2010 Act”) and The Marine and Coastal Access Act 2009 (“the 2009 Act”).

- 1.1.5 In the event that the Developer does not submit applications for a s.36 consent under the 1989 Act and marine licences under the 2010 Act and 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.

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 28 kilometres ("km") west of Hoy, Orkney and 23km north of the Caithness Coast with a total array area of approximately 657 square km (km²) within the N1 Scotwind lease site. The Proposed Development will have a capacity of greater than 50 Mega Watts ("MW") and therefore requires the Scottish Ministers' consent to allow its construction and operation. The Proposed Development will also require marine licences granted by the Scottish Ministers under the 2009 Act and the 2010 Act, to permit any and all 'licensable marine activities' carried on for the Proposed Development and objects in or over the sea, or on or under the sea bed.

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 has not been selected but will either be fix-bottom foundations or floating substructures. In addition, up to 10 export cables are proposed within 3 extensive cable corridor search areas. The landfall locations for the export cables are yet to be decided with 16 possible locations under consideration.

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

- Up to 125 WTGs (each comprising a tower section, nacelle and rotor blades) and all associated support structures and foundations;
- Foundation options being considered include: monopiles, jacket foundations (piled or suction buckets), gravity base substructures, semi-submersibles, barges and tension leg platforms;
- A maximum rotor diameter of no greater than 330 metres ("m");
- A maximum rotor tip height of 370m (above Lowest Astronomical Tide ("LAT"));
- Maximum nacelle height of 200m (above mean sea level ("MSL"));

- Minimum rotor blade clearance to water surface of at least 22m (above sea level in all tidal states);
- Up to five offshore substation platforms (“OSP”) and associated support structures and foundations; The OSP topsides will be up to 45m in length, 38m in width and be approximately 45m in height above MSL with piled jacket foundations;
- Up to 10 offshore export cables, laying method may include jet trenching, mechanic trenching, ploughing and mass flow excavation. Cable installation method at landfall may include Horizontal Directional Drilling (“HDD”), open-cut trench or rock pinned;
- Scour protection consisting of either concrete mattresses, rock placement or grout bags; and
- Inter-array cabling linking the individual WTGs to the OSPs, end links and inter-connections between substations (totalling up to 750km);

2.2.4 The Proposed Development will have an approximate installed capacity of around 2 Gigawatts (“GW”).

2.2.5 The construction of the Proposed Development is anticipated to take up to four years, as detailed in section 1.3.4 of the Scoping Report. Construction of the offshore components is proposed to commence in 2028 with first power being generated in 2029. The operational lifetime of the Proposed Development is 50 years, followed by a period of decommissioning. The Developer has a grid connection agreement with National Grid for a connection to the existing network at Spittal substation. Additionally, the Developer has an exclusive partnership for the Proposed Development to power the Flotta Hydrogen Hub through a Power Purchase Agreement (“PPA”). The Developer may utilise both of these power export options.

2.3 Onshore/Planning

2.3.1 The Scottish Ministers are aware the Developer has sought a separate scoping opinion from The Highland Council (“THC”) and Orkney Islands Council (“OIC”) for the associated onshore transmission works. Therefore, this Scoping Opinion covers only the offshore elements of the Proposed Development. It is essential that the EIA Report concerning onshore works will be available at the time that the EIA Report for the Proposed Development is being considered to ensure that all the information relating to the project as a ‘whole’ is presented. The EIA Report for the Proposed Development must consider the cumulative impacts with the onshore works.

2.3.2 The Scottish Ministers note that the Developer is undecided as to the vehicle in which permission for the onshore transmission works are to be sought. Should the chosen method be permission from the Scottish Ministers via a s.36 consent

with deemed planning permission, the Developer is required to seek a direction from the Scottish Ministers under section 57(2) of the Town and Country Planning (Scotland) Act 1997 that planning permission for the onshore transmission infrastructure be deemed to be granted as part of the s.36 consent.

2.4 The Scottish Ministers' Comments

Description of the Proposed Development

- 2.4.1 The Scottish Ministers would like to highlight and mirror the concerns raised by The Royal Society for the Protection of Birds ("RSPB"), NatureScot and Marine Scotland Science ("MSS") in relation to the broad design envelope. This has made it difficult to provide specific advice to assist in refining the scope of the EIA Report. Further refinement of the design envelope is required to enable consideration of the worst case scenario. The advice provided in this Scoping Opinion is proportionate to the level of detail provided in the Scoping Report.
- 2.4.2 Section 1.3 of the Scoping Report states that the site selection process is ongoing and further refinements to the project boundary may occur. It is evident within the Scoping Report that no refinement of the Option Agreement Area ("OAA") has taken place and further detailed assessment is required to achieve this. The Scoping Report covers the whole of the OAA and multiple cable corridors and landfall sites for which further assessment is required. If the project design envelope is not refined further, the list of data sources, impact pathways and mitigation that may require to be assessed could become unmanageable. The Scottish Ministers direct the Developer to paragraph 2.4.5 of this Scoping Opinion with regards to application of the Design Envelope Approach. In addition, throughout the Scoping Report reference is made to further refinement being undertaken after ongoing consultation. This has the potential to be resource intensive and capacity of external agencies required for consultation cannot be guaranteed.
- 2.4.3 Figure 1-1 of the Scoping Report depicts the extensive cable corridor search area under consideration. The Scottish Ministers advise the Developer to engage with stakeholders including the Scottish Fishermen's Federation ("SFF") and Orkney Fisheries Association ("OFA") with regards to refinement of the cable corridors. The EIA Report must detail the chosen cable routes providing clear justification as to the selection over the alternatives considered taking into consideration the outcome of engagement with stakeholders.
- 2.4.4 Section 1.3.1.2 of the Scoping Report states that the location of each WTG is yet to be finalised. It must be clear in the EIA Report which arrangement is being assessed. If the arrangement has not yet been decided, the EIA Report must include a full and detailed description of all layout options considered.

- 2.4.5 Section 1.3.2 of the Scoping Report explains that the landfall location of the export cables is yet to be determined, with 16 potential sites under consideration. Due to the number of options under consideration the range of impact pathways could vary greatly. The EIA Report must clearly detail each landfall location and state the site specific considerations for each option. The EIA Report must also outline the steps taken to mitigate any environmental impacts resulting from the cable landfall.
- 2.4.6 Section 1.3.4.1.3 of the Scoping Report states that both fixed and floating sub-structure designs are currently being reviewed for the Proposed Development. The anticipated maximum design envelope has been presented in table 1-4 with a schematic of different foundation options shown in figure 1-3. The Scottish Ministers advise that the EIA Report must include a full and detailed description of all fixed and floating sub-structure designs considered within the design envelope.
- 2.4.7 Section 1.3.4.1.3 of the Scoping Report also shows that the type and number of anchors and moorings required will be subject to refinement upon selection of the substructure and that scour protection may be required. The EIA Report must provide details of the anchor and mooring design options being considered within the design envelope. In addition, if there is any potential for scour protection to be used, this must be assessed in the EIA Report including details on materials, quantities and locations.
- 2.4.8 Sections 1.3.4.1.5 and 1.3.4.2 the Scoping Report states that the primary method for installation of the inter-array and interconnector cables and export cables is burial, method of which is yet to be decided. The EIA Report must be clear on the range of burial depths that have been considered as part of the assessment. 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.
- 2.4.9 If there is any potential for cable protection to be used, this must be assessed in the EIA Report including details on materials, quantities and location. In addition, any seabed levelling or removal of substance or objects from on or under the seabed, required for installation of both the inter-array cables and export 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. The Scoping Report at section 2.1.4.1.1 identifies that boulders are likely to 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.

- 2.4.10 Section 1.3.4.1.4 of the Scoping Report states that the Proposed Development may require up to 5 OSPs and are proposed to have piled jacket foundations. The location of the OSPs are yet to be determined. It is further stated that scour protection may also be required, the options being considered are concrete mattresses, rock placement and artificial fronds. The Scottish Ministers advise that the EIA Report must include a full and detailed description of any scour protection that may be required.
- 2.4.11 Section 1.3.4.3 of the Scoping Report details the three techniques for the installation of the offshore export cables at landfall are being considered; HDD; open-cut trench; and rock pinning. The EIA Report must include a detailed assessment of the cable installation methods under consideration and the impacts of each method at each potential landfall site and the Flotta Hydrogen Hub should it form part of the Proposed Development.
- 2.4.12 Section 2.6.1 of the Scoping Report states that pre-construction surveys and unexploded ordnance (“UXO”) clearance will be considered and assessed as part of the European Protected Species licence application and marine licence application. The Scottish Ministers advise that the EIA Report must include assessment of the in-combination effects of pre-construction activities such as geophysical surveys and UXO clearance. The EIA Report must also include considerations of noise abatement methods for detonation of UXO and 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 in this regard.¹ Additionally, clearance of UXO must also be considered within a cumulative impact assessment in the EIA Report. Further to this, the potential presence of UXO and disposal sites should also be assessed within the EIA Report with regards to the installation of cables and any other works that result in disturbance to the seabed.
- 2.4.13 Section 1.3.5.3 of the Scoping Report states that in line with The Energy Act 2004 and the Scotland Act 2016 a decommissioning programme will be

¹ [Marine environment: unexploded ordnance clearance joint interim position statement](#)

prepared prior to construction and will be reviewed every 5 years. The EIA Report must include an assessment of potential significant effects during the decommissioning phase. 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.

- 2.4.14 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.

Design Envelope

- 2.4.15 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 1.3.3 of the Scoping Report. The Scottish Ministers direct the Developer to Scottish Government guidance "[Electricity Act 1989 – section 36 applications: guidance for applicants on using the design envelope](#)".
- 2.4.16 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.
- 2.4.17 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.

- 2.4.18 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

- 2.4.19 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 1.3.1 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.
- 2.4.20 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 parameters of the export cables, the cable corridor options and the landfall location or locations. 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 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 impacts 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.
- 3.4.4 The Scottish Ministers acknowledge that the Scoping Report proposes that the EIA Report will not include a standalone topic for Major Accidents and/or Disasters and rather will be considered within the ecological topics.

3.5 Climate and Greenhouse Gases

- 3.5.1 Section 1.4.6.3 of the Scoping Report proposes that the impact of climate change effects will be considered in a standalone assessment that will be appended to the EIA Report. The Scottish Ministers agree with the approach outlined by the Developer in the Scoping Report and that the assessment will be based on a Life Cycle Assessment (“LCA”) approach and note that the IEMA Environmental Impact Assessment Guide “Assessing Greenhouse Gas Emissions and Evaluating Their Significance” (“IEMA GHG Guidance”) will be utilised to provide further insight on this matter. For the avoidance of doubt the Scottish Ministers advise that this standalone assessment must include the pre-construction, construction, operation and decommissioning phases of the Proposed Development, including consideration of the supply chain as well as benefits beyond the life cycle of the Proposed Development.

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 30 day consultation process, which commenced on 1 April 2022. 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 International Airport*
- Aquatera
- Bettyhill, Strathnaver and Altnaharra Community Council
- Birsay Community Council
- **BT (Radio Network Protection Team)**
- Caithness Chamber of Commerce
- Caithness West Community Council
- Civil Aviation Authority
- Cooke Aquaculture
- Crown Estate Scotland
- **Defence Infrastructure Organisation - Ministry of Defence (“MOD”)**
- Develop Durness Group
- Dounreay Site Restoration Limited
- Dounreay Stakeholder Group
- Dunnet and Canisbay Community Council
- Durness Community Council
- Fisheries Management Scotland
- **Highlands and Islands Airport Ltd (“HIAL”)**
- *Highlands and Islands Enterprise*
- **Historic Environment Scotland (“HES”)**
- Joint Radio Company
- Long Distance Advisory Council
- Marine Planning and Policy
- Marine Safety Forum
- Marine Scotland – Compliance (Kirkwall Fishery Office)
- Marine Scotland – Compliance (Scrabster Fishery Office)
- **Maritime and Coastguard Agency (“MCA”)**
- Melvich Community Council
- **National Air Traffic Services (“NATS”)**
- National Trust for Scotland
- **NatureScot, operating name of Scottish National Heritage**
- **North and East Coast Regional Inshore Fisheries Group**

- North Shore Surf Club
- **Northern Lighthouse Board (“NLB”)**
- Northlink Ferries
- Nuclear Decommissioning Authority
- Oil and Gas UK
- Orkney Ferries
- **Orkney Fisheries Association**
- Orkney Fishermen’s Society
- Orkney Harbours
- Orkney Inshore Fisheries
- **Orkney Islands Council**
- **Orkney Marine Mammal Research Initiative**
- Orkney Sustainable Fisheries (“OSF”)
- Outer Hebrides Regional Inshore Fishery Group
- **Royal Yachting Association (“RYA”)**
- **RSPB Scotland**
- Scottish & Southern Electricity
- Scottish Canoe Association
- Scottish Creel Fishermen’s Association
- *Scottish Environment Protection Agency*
- **Scottish Fishermen’s Federation (“SFF”)**
- Scottish Fishermen’s Organisation
- Scottish Pelagic Fishermen’s Association
- Scottish Surfing Federation
- Scottish Water
- Scottish Wildlife Trust
- Scottish Whitefish Producers Association
- Scrabster Harbour Authority
- Shetland Shellfish Management Organisation
- SIMEC Atlantis Energy – on behalf of MeyGen Tidal Energy Project
- Spacehub Sutherland
- Sports Scotland
- Strathy and Armadale Community Council
- *Stromness Community Council*
- Surfers Against Sewage
- **The Highland Council**
- Tongue Community Council
- Transport Scotland Ports and Harbours
- **UK Centre for Ecology & Hydrology**
- **UK Chamber of Shipping (“UKCoS”)**
- **Visit Scotland**

- *Whale and Dolphin Conservation Society*

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

4.2 Responses received

4.2.1 From the list above a total of 24 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 and Coastal Processes

5.2.1 The Scottish Ministers are broadly content with the proposed study area outlined in section 2.1.2 of the Scoping Report. For the avoidance of doubt, potential impacts out with the study area, in particular to the Marine Geomorphology of the Scottish Shelf Seabed feature of the North-West Orkney Nature Conservation ("NC") MPA, should be considered in line with the NatureScot representation and MSS advice. In regard to the baseline information detailed in Table 2-1 of the Scoping Report, the Scottish Ministers highlight the representation from NatureScot and advise that the 'Dynamic Coast' project data source should be updated to the 'Dynamic Coast 2' mapping project. Additionally, in relation to data sources, the Scottish Ministers recommend that the advice provided by MSS is fully considered.

5.2.2 The Scottish Ministers broadly agree with the potential impacts scoped in for further assessment in the EIA Report as contained within Table 2-5 of the Scoping Report. However, in line with the NatureScot representation the Scottish Ministers advise that changes to coastal processes, resulting from measures to secure re-exposed cables at landfall, must also be scoped into the EIA Report. In line with advice provided by MSS, the Scottish Ministers advise that the potential changes to water column structure must also be scoped into the EIA Report. The Scottish Ministers advise that the Developer must fully address the MSS advice in this regard.

5.2.3 For the impact pathways scoped in to the EIA Report, the Scottish Ministers advise that the full range of mitigation techniques and published guidance is considered and discussed in the EIA Report. The Scottish Ministers highlight the NatureScot representation and advise that in addition to the designated sites listed in table 2-2, impacts from the Proposed Development on the geological designated features of the Non-marine Devonian in Red Point Coast Special Site of Scientific Interest ("SSSI") and of the Moine in Strathy Coast SSSI, must be assessed in the EIA Report.

- 5.2.4 In regards to the proposed assessment approach, the Scottish Ministers advise that sufficient evidence must be provided to justify the simplified approach. The MSS advice in this regard must be addressed in full by the Developer in the EIA Report.
- 5.2.5 In section 2.1.6 of the Scoping Report the Developer has listed the onwards impacts to other EIA topics. The Scottish Ministers draw the attention of the Developer to the representation from OIC and advise that the impacts of historic environment assets, and landscape and seascape, should be included and scoped into the EIA Report in addition to the impacts summarised in Table 2-5 of the Scoping Report.
- 5.2.6 In section 2.1.9.1 of the Scoping Report the Developer details the approach and the tools that will be used to assess the nature and magnitude of any impacts to physical and coastal process from the Proposed Development. The Scottish Ministers highlight the representation from OIC regarding the need to assess cable landfall, cable laying, cable protection and transition joints bay work within the EIA Report. Additionally, the Scottish Ministers highlight the advice from NatureScot in relation to consultation prior to undertaking the proposed hydrodynamic modelling. The Scottish Ministers advise that the Developer must fully address the points raised by NatureScot, OIC and MSS within the EIA Report.
- 5.2.7 With regards to cumulative assessment, the Scottish Ministers advise that the Developer consider the impacts from other types of construction, aquaculture and port and harbour construction within the EIA Report in line with the NatureScot representation and MSS advice.

5.3 Water and Sediment Quality

- 5.3.1 The Scottish Ministers are broadly content with the study area and baseline data as described in section 2.2 of the Scoping Report, however highlight the representation from OIC and advise that the designated waterbodies for Scapa Flow within section 2.2.4.2.1 must include the Shellfish Water Protected Area in the Bay of Firth.
- 5.3.2 In Table 2-12 of the Scoping Report, the Developer summarises the impacts to be scoped into and out of the EIA Report. In line with the representation from OIC, the Scottish Ministers advise that the Developer must scope in potential water quality impacts to fish farms within Scapa Flow which must also be included in the cumulative impact assessment.

5.4 Benthic Subtidal and Intertidal Ecology

- 5.4.1 The Scottish Ministers highlight the concerns raised within the representation from NatureScot regarding the limited information on site-specific surveys and the inclusion of only general high level information within in section 2.3 of the Scoping Report. Therefore, in line with the NatureScot representation, the advice given by the Scottish Ministers is proportionate to the level of detail provided within the Scoping Report.
- 5.4.2 The Scottish Ministers are broadly content with the study area as described in section 2.3 of the Scoping Report. In line with the NatureScot representation, the Developer must provide clarification on the surveys to be undertaken in the intertidal area. With regards to data sources to inform the EIA Report, the Scottish Ministers direct the Developer to the OIC representation and MSS advice and advise that the data sources identified must be considered in the EIA Report. Finally, the Scottish Ministers recommend that the scope of the baseline surveys is agreed with NatureScot in advance.
- 5.4.3 The Scottish Ministers broadly agree with the impact pathways included in table 2-18 which are scoped in for further assessment in the EIA Report. However, in addition and in line with the NatureScot representation, The Scottish Ministers advise that impacts on habitat loss and disturbance from pre-construction seabed preparation works and, if required, scour protection, must be scoped into the EIA Report. In regards to the colonisation of hard structures and changes in prey species availability, the Scottish Ministers advise that the EIA Report must fully address the NatureScot representation.
- 5.4.4 Due to the large design envelope, impacts arising from suspended sediments will vary depending on the foundation type and/or construction/decommissioning methods used. In line with the NatureScot representation, the Scottish Ministers advise that significant effects must be quantified and the impacts assessed in the EIA Report, noting that these may differ in relation to habitats and species.
- 5.4.5 In section 2.3.4.1.4 of the Scoping Report the Developer has identified protected sites with benthic interests. The Scottish Ministers draw the Developers attention to the NatureScot representation and advise that all of the protected features of the North-West Orkney Nature Conservation Marine Protected Area (“MPA”) must be scoped in to the EIA. In addition, the Mucklehead and Selwick SSSI must be scoped into the EIA Report in relation to potential landfall areas. The Scottish Ministers also highlight the NatureScot representation regarding the potential presence of the flapper skate Priority Marine Feature (“PMF”) within the Proposed Development area, which must

also be scoped into the EIA Report in addition to the species identified in Table 2-15 of the Scoping Report.

- 5.4.6 As highlighted in the representation from NatureScot, only limited information is provided within the Scoping Report in regards to how impacts will be assessed. The Scottish Ministers advise that the advice regarding a qualitative assessment, and consideration of indirect impacts on birds, fish and marine mammals, must be fully addressed within the EIA Report. In addition, the Developer must also fully implement the advice from MSS in relation to the assessment approach.
- 5.4.7 In regards to cumulative impacts, the Scottish Ministers highlight the representation from NatureScot regarding impacts to Scapa Flow from other types of development, aquaculture and port and harbour construction. The Scottish Ministers advise that the NatureScot advice should be fully addressed in the cumulative assessment within the EIA Report.
- 5.4.8 Regarding mitigation and monitoring, the Scottish Ministers advise that the full range of mitigation techniques and published guidance are considered within the EIA Report as highlighted in the NatureScot representation. In line with the MSS advice, the Invasive Non-Native Species (INNS) management plan should be extended to include a detailed INNS monitoring plan.

5.5 Fish and Shellfish Ecology

- 5.5.1 The Scottish Ministers are broadly content with the study areas defined in Section 2.4.2 of the Scoping Report and the baseline data detailed in Table 2-20 however advise the Developer to include the ScotMER research as highlighted in the MSS advice and NatureScot representation. In line with the MSS advice, site-specific surveys of suitable quality are required to characterise the site and where possible identify origins of populations of diadromous fish within the site boundary. Additionally, the Developer is directed to the data sources highlighted by MSS and advise these are considered within the EIA Report. Further to this, the Scottish Ministers advise that the impacts on diadromous fish must be assessed separately within the EIA Report in line with MSS advice.
- 5.5.2 In Section 2.4.4.1.5 of the Scoping Report, identifies the River Thurso, Naver and Borgie Special Areas of Conservation (“SAC”) which discharge in the vicinity of the Proposed Development. The Scottish Ministers advise that in addition to those identified, there is potential connectivity with other SACs including Berriedale and Langwell Waters, Foinaven, Little Gruinard River, River Spey, River Oykel and River Moriston which must be considered in the EIA Report. The Developer must address in full, the NatureScot and MSS advice in

relation to diadromous fish. MSS highlight the significant knowledge gaps in relation to diadromous fish in the Pentland Firth and Orkney waters area. The Developer should note the MSS advice in relation to the value of completing site specific surveys for diadromous fish and the limitations of desk-based studies. If site specific surveys are not undertaken justification must be included on how the information used to inform the EIA Report provides a robust assessment, noting that a lack of evidence is insufficient justification to conclude no impact.

- 5.5.3 In regards to key species, the Scottish Ministers advise that the Developer must consider and fully implement the advice contained in the NatureScot representation and MSS advice in relation to diadromous fish, PMF, shellfish and spawning and nursery grounds within the EIA Report. Diadromous fish should be included within each of the impact pathways identified in table 2-24 of the Scoping Report. Additionally, the Scottish Ministers highlight the representation from the SFF and OIC and advise that the Developer must consult with the SFF and OSF to inform the fish and shellfish ecology impact assessment.
- 5.5.4 Table 2-24 of the Scoping Report the Developer summarises the potential impacts on fish and shellfish during different phases of the Proposed Development. The Scottish Ministers broadly agree with the impacts scoped into and out of the EIA Report. However, in regards to habitat loss and disturbance, the Scottish Ministers advise that all appropriate pre-construction seabed preparation works must be scoped into the EIA Report. The Scottish Ministers do not agree that barrier effects to migratory fish from the presence of turbine installation should be scoped out and therefore this must be scoped in for further assessment in the EIA Report. The MSS advice in this regard must be fully addressed by the Developer.
- 5.5.5 In regards to diadromous fish the Scottish Ministers highlight the concerns from MSS regarding the broad design envelope specifically the large cable search area and multiple landfall options. For each landfall location impacts on diadromous fish will vary, therefore specific concerns for each individual site should be assessed within the EIA Report.
- 5.5.6 In regards to underwater noise, the Scottish Ministers advise that impacts from UXO clearance must be explicitly considered within the EIA Report. Additionally, noise disturbance from construction activities must also be scoped into the EIA report. The Scottish Ministers do not agree that underwater noise during the operations and maintenance phases should be scoped out and in line with the NatureScot representation and MSS advice, this impact pathway must be scoped into the EIA Report if floating infrastructure is selected. Finally,

the Scottish Ministers advise that the NatureScot advice in relation to noise impacts on Atlantic salmon is addressed in full by the Developer.

- 5.5.7 With regards to Electromagnetic Fields (“EMFs”) the Scottish Ministers advise, in line with the NatureScot advice, that the EMF impact on all relevant fish species including elasmobranch species, nephrops and diadromous fish, including migratory fish are included in the assessment. As advised by MSS, the paper on ‘The Effect of Anthropogenic EMF on the Early Development of Two Commercially Important Crustaceans, European Lobster, *Homarus gammarus* and Edible Crab, *Cancer pagurus* by Harsanyi et al. 2022, should be considered within the EIA Report.
- 5.5.8 In relation to changes in prey species availability, the Scottish Ministers advise that table 2-24 does not adequately capture changes in prey availability as a result of habitat loss or disturbance. Further consideration is required in the EIA Report to ensure impacts to key prey species and their habitats are considered for the Proposed Development and in combination with other projects. The NatureScot representation in this regard must be fully addressed by the Developer in the EIA Report.
- 5.5.9 In regards to mitigation and monitoring, the full range of mitigation measures and published guidance must be considered within the EIA Report and the advice on monitoring approach, as recommended in the NatureScot representation, must be fully addressed within the EIA Report.
- 5.5.10 Potential cumulative impacts are summarised by the Developer in section 2.4.7 of the Scoping Report. The Scottish Ministers advise that the EIA Report should consider cumulative effects of key impacts such as habitat loss and change, EMF impacts and the potential for cumulative impacts with existing fish farm developments as detailed in the representations from NatureScot and OIC and the OFA. In line with representation from NatureScot and advice given by MSS, impacts of the Proposed Development in combination with other developments should be assessed against all the designated features of the North-West Orkney NC MPA including sandeel.
- 5.5.11 In agreement with the NatureScot and the OFA representations and MSS advice, the Scottish Ministers advise the Developer that transboundary impacts on fish and shellfish ecology should be considered further.

5.6 Offshore Ornithology

- 5.6.1 In regards to the study area, section 2.5.2 of the Scoping Report does not clearly set out the specific areas covered by the survey campaign which commenced in July 2020, nor does it make clear the extent to which cable search areas have

been included. The Scottish Ministers advise the Developer that the study area must be clearly defined within the EIA Report and include maps to show the project footprint in line with the NatureScot representation and MSS advice. In addition, ornithological impacts in the intertidal area have not been included in the Scoping Report. The NatureScot representation must be fully addressed in this regard, in the EIA Report.

- 5.6.2 In relation to baseline characterisation, in addition to the data sources provided in Table 2-26, Section 2.5.3 the Scottish Ministers advise that the Developer must also include the Waggit et al. (2020) and the Bradbury et al. (2019) report as advised by NatureScot in its representation.
- 5.6.3 In regards to baseline characterisation, The Scottish Ministers advise that the digital area surveys (DAS) which commenced in July 2020 have not been undertaken in line with the NatureScot guidance which requires that baseline surveys should commence at the start of either the breeding or non-breeding seasons. Although NatureScot advise that this should be acceptable, consideration should be given to extending the data collection until the end of the 2022 breeding season, in line with the RSPB representation. No detail of survey design, methodology or summary data from the DAS has been provided in the Scoping Report on which to provide any further comment or inform advice. Therefore, in line with the RSPB representation and MSS advice, in the absence of any survey data, all species identified in the DAS and all qualifying species of the Special Protected Areas (“SPAs”) in foraging range must be scoped in for further assessment in the EIA Report. The Developer must also provide evidence of robustness of methods deployed within the EIA Report in line with the representations from NatureScot and RSPB. The Scottish Ministers advise that the NatureScot and RSPB representations and the MSS advice in relation to the detection of smaller bird species, for example storm petrels, and crepuscular species are addressed in full. Finally, in relation to baseline characterisation of cable routes and landfall, The Scottish Ministers advise that the Developer must address the NatureScot representation and MSS advice in full.
- 5.6.4 In Table 2-34 of section 2.5.6 of the Scoping Report, the Developer summarises the potential impacts to offshore ornithology. The large scope of the offshore assessment results in a lack of clarity in regards to which pathways have been identified as most relevant in the different project areas and phases. However, the Scottish Ministers broadly agree with all of the proposed impacts scoped in to the EIA report, however in addition, impacts of disturbance should be extended to the operational and maintenance phases due to impacts from vessel activity, in line with the NatureScot representation and MSS advice.

- 5.6.5 The Scottish Ministers advise that the Scoping Report does not adequately capture impacts of wet storage on ornithological interests. The Scottish Ministers advise that the NatureScot representation and the MSS advice in this regard must be fully addressed by the Developer in the EIA Report. With regards to impacts of artificial light sources, the Scottish Ministers advise that current proposed qualitative approach, as detailed in paragraph 5, section 2.5.9.1.3 of the Scoping Report, may be insufficient. Further consultation with NatureScot is necessary to determine appropriate assessment methods, and to ensure embedded mitigation to reduce the risk to birds is included in the EIA Report.
- 5.6.6 In regards to indirect impact pathways, the Scottish Ministers advise that the proposed approach to assess effects on seabird prey should be scoped in to the EIA Report in line with representations from NatureScot, RSPB and OIC. The Scottish Ministers highlight the concerns raised by both NatureScot and RSPB in their representation that this will be insufficiently captured in the wider assessment of displacement. In addition, further consideration of impacts of ghost fishing must be included in the EIA Report for floating WTGs. The Scottish Ministers advise that the NatureScot, RSPB and OIC representations and MSS advice in relation to indirect impact pathways must be addressed in full in the EIA Report.
- 5.6.7 Key species are identified in section 2.5.4.1.1 of the Scoping Report. The Scottish Ministers broadly agree with those identified but advise that in addition great skua should also be included. Depending on the results of the baseline surveys, additional species such as fulmar, European storm petrel and Leach's petrel may also require to be considered as a key species in future assessments. In addition, when considering the export cable through Scapa Flow, the Developer must include all qualifying species of the Scapa Flow SPA. This is a view supported by NatureScot and RSPB. Further advice in respect of European protected sites will be provided if a Habitats Regulations Appraisal ("HRA") screening request is submitted. The Scottish Ministers advise that the Developer must fully implement the advice in the NatureScot representation regarding bespoke survey considerations but suggest further discussion with NatureScot on this point is required.
- 5.6.8 In relation to page 163 of the Scoping Report whereby a pers comms from Francis Daunt is quoted regarding puffin tracking, The Scottish Ministers would like to note that this is confirmed to be a misrepresentation. The Scottish Ministers refer to the RSPB representation and advise that tracking data can be useful however caution should be exercised in using the data to determine where birds from colonies do not visit. The Developer is directed to the puffin tracking study undertaken by Ellie Owen of RSPB. In addition, and in line with the NatureScot representation, the Developer is advised to review the survey undertaken by the Sule Skerry Ringing Group in 2018 with a view to considering

the requirement for a further bespoke survey. Given the recent surge in avian flu, any additional surveys which are being considered should be in line with the guidance in place at the time and discussed further with NatureScot.

- 5.6.9 In regards to the impact assessment, The Scottish Ministers are broadly content with the assessment methods and tools proposed, in table 2-34 (Section 2.5.6) of the Scoping Report, however further discussion with NatureScot will be required when the project design is refined and baseline information is provided.
- 5.6.10 In line with the NatureScot and RSPB representations and the MSS advice, the Scottish Ministers advise that MRSea is the preferred method for modelling densities should the data allow. If an alternative approach is proposed, this must be discussed and agreed in advance of the EIA Report with NatureScot.
- 5.6.11 The Scottish Ministers advise that displacement effects should be assessed using the SNCB (2017) matrix methods for auks in the breeding and non-breeding seasons and the SeabORD tool for species with tracking data in the breeding season. Further input options for SeabORD may become available through the Cumulative Effects Framework (“CEF”) project within the timescales relevant to the project. The Scottish Ministers advise that the displacement and mortality rates provided by NatureScot in its representation are adopted. The Scottish Ministers advise that the NatureScot and RSPB representations and the MSS advice in relation to displacement effects must be addressed in full in the EIA Report.
- 5.6.12 In regards to Collision Risk Modelling (“CRM”), the Scottish Ministers advise that the basic and extended Band (2012) models are used primarily with option 2 and 3 for the worst case and most likely scenarios, using Johnston et al. (2014) corrigendum flight height data. Outputs should be provided using the stochastic CRM tool. The Scottish Ministers in line with the NatureScot and RSPB representations and the MSS advice do not support the use of Bowgen & Cook (2018) avoidance rates and flight speeds in CRM for kittiwake and large gulls. The Scottish Ministers advise that the SNCB (2014) guidance on avoidance rates should be used although highlight the NatureScot advice that further review of avoidance rates, specifically for application in the sCRM is ongoing and NatureScot will advise of any revised SNCB position once this process is complete.
- 5.6.13 With regard to Population Viability Analysis (“PVA”), the Scottish Ministers advise the use of the Natural England PVA tool in line with the representations made by RSPB and NatureScot. The Scottish Ministers highlight the representation of RSPB and the NatureScot together with the MSS advice in this regard and advise that it is fully considered within the EIA Report.

- 5.6.14 With regards to cumulative assessment, the Scottish Ministers advise that the Developer consider the impacts of consented onshore developments in Orkney, particular consideration should be given to the impact to red-throated divers in line with the representation from RSPB. The Scottish Ministers draw further attention to representation from both RSPB and NatureScot in relation to Scapa Flow and advise that the cumulative effects from other types of development, aquaculture and port and harbour construction are also considered in the EIA Report.
- 5.6.15 In relation to transboundary impacts, consideration should be given to potential impact on seabird populations that breed out with Scotland as well as to wintering water birds as highlighted in the representation made by NatureScot. Further discussion on these impacts will be required on receipt of the HRA screening report. Further to this the Scottish Ministers draw the Developers attention to the data source provided by OIC in their representation.

5.7 Marine Mammals and Megafauna

- 5.7.1 As highlighted in the representations from NatureScot, and Orkney Marine Mammal Research Initiative (“OMMRI”), the Developer has provided only high level information on impacts and assessment methods, including underwater noise impacts, within the Scoping Report. Due to the broad nature of the design envelope within the Scoping Report, the Scottish Ministers are also unable to comment on the realistic worst-case scenario of the project.
- 5.7.2 The Scottish Ministers are broadly content with the study area detailed in section 2.6.2 of the EIA Report. In line with the MSS advice, The Scottish Ministers advise that distances to protected sites should be measured from the site boundary, rather than the centre of the Proposed Development. In addition to digital area surveys, the Scottish Ministers advise that the Developer must also carry out passive acoustic monitoring to provide a more robust estimate of cetaceans present. Additionally, to ensure that SACs with grey and harbour seal qualifying features are fully considered within the EIA Report, 50km and 20km buffers should be used respectively. Designated seal haul-out sites within or adjacent to potential landfall sites of the Proposed Development must also be fully addressed within the EIA Report.
- 5.7.3 The Scottish Ministers are broadly content with the baseline data sources listed in Table 2-37 within section 2.6.3 of the Scoping Report. However, overall, the Scoping Report lacks information on marine mammal abundance and distribution within the development area and this must be addressed in the EIA Report, in line with the MSS advice. The EIA Report must also consider the Scottish Marine Wildlife Watching Code and available data on strandings from sources such as the Scottish Marine Stranding Scheme. In line with the MSS

advice, the Scottish Ministers advise that the Developer consider the use of Thompson et al (2019) in considering local harbour seal population estimates.

- 5.7.4 In regards to key species, in addition to list of species identified in section 2.6.4 of the Scoping Report, the Scottish Ministers advise that the Developer must take a precautionary approach and include killer whale (orca), white-sided dolphin and humpback whale in the assessment. This is a view supported by NatureScot and MSS. In addition, and in line with the NatureScot representation, the most recent Inter-Agency Marine Mammal Working Group (“IAMMWG”) (2021) management until estimates should be used for each species in the impact assessment
- 5.7.5 In Table 2.40 of the Scoping Report, the Developer summarises the potential impacts to marine mammals and megafauna 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 during the operation phase, the potential for vessel collisions and, disturbance due to physical presence and noise from vessels, and impacts due to prey availability for all phases must be scoped into the EIA Report. In this regard, the NatureScot representation and MSS advice must be addressed in full in the EIA Report. The Scottish Ministers also advise that potential noise impacts from pre-construction activities, including the removal of unexploded ordnance and geophysical surveys must be scoped into the EIA Report. In addition landfall and export cable works at Scapa Flow, and the potential interaction with seal haul out sites, must be scoped into the EIA Report for further assessment, in line with the NatureScot representation.
- 5.7.6 The Scottish Ministers advise that due to the broad nature of the project design envelope it is difficult at this stage to scope out many impact pathways. In line with the MSS advice, the Scottish Ministers advise that there is insufficient evidence to exclude potential impacts of operational noise. Therefore the impact from floating and fixed foundation types must be scoped into the EIA Report. However, the operational noise impact from fixed foundation types need only be assessed in respect of minke whale. In addition, potential pollutants have not been specified, nor have the mechanisms and likelihood of any accidental releases. Therefore, this impact pathway must also be scoped into the EIA Report for further assessment.
- 5.7.7 In regards assessment methodologies, the metrics for underwater noise modelling and assessment of cumulative effect require further discussion with NatureScot. The Scottish Ministers advise that the Developer must consider and fully implement the NatureScot advice in relation to its approach to the assessment of marine mammal densities and population consequence and cumulative impacts.

- 5.7.8 In line with the NatureScot representation, the Scottish Ministers advise that where impact pathways have been identified, a full range of mitigation techniques and published guidance must be included in the EIA Report. This should include development of and adherence to a marine mammal mitigation protocol. If pile driving is to be used, the Scottish Ministers expect that the approach to noise mitigation will be informed by the best available evidence and advise the Developer to refer to the NatureScot advice on noise abatement and entanglement.
- 5.7.9 In regards to the cumulative and transboundary impacts from the Proposed Development included in section 2.6.8, little detail is provided in the Scoping Report on how these effects will be assessed and therefore this should be further informed through discussion with NatureScot.

5.8 Commercial Fisheries

- 5.8.1 The Scottish Ministers are broadly content with the proposed study area identified within section 2.7.2 and figure 2-29 of the Scoping Report.
- 5.8.2 In regards to data sources identified in Table 2-42 of the Scoping Report, the Scottish Ministers highlight that the 2020 landings data is now available though, in line with the MSS advice, these should be carefully interpreted due to the impacts of the Covid-19 pandemic. The Scottish Ministers also advise that the Developer considers the upcoming MSS advice in relation to 'best practice guidance for assessing fisheries displacement from licensed marine activities' once published.
- 5.8.3 In Table 2-45 of the Scoping Report the Developer summarises the impacts to commercial fisheries and proposes to scope in potential impacts for all phases of the Proposed Development. The Scottish Ministers broadly agree with the impacts currently scoped into the EIA Report however highlight the representations from the OFA and OIC, and advise that the Developer must carry out further consultation with fisheries representatives, to fully identify the impacts on commercial fisheries to be scoped into the EIA Report. The Scottish Ministers also advise that fisheries impacts will depend on which wind turbine technology is selected in the final design as there are major differences in potential impacts between fixed foundations and floating wind turbines and draw attention to the MSS advice in this regard.
- 5.8.4 With regards to the impacts of temporary loss or restricted access to fishing grounds, the Scottish Ministers direct the Developer to the representations from OIC and the OFA and advise that the Developer must take account of seasonal and year round operations of fisheries in its assessment. Displacement impacts

should include any impacts on the wider environment as well as changes in fuel use by fishing vessels. Safety issues for fishing vessels should include consideration of safe access for fishing vessels to the seabed, water column and sea surface, and navigational access to ports, harbours or slipways that support fishing vessels when transiting to and from landfall areas.

- 5.8.5 The Scottish Ministers advise that commercial fisheries should be included in the cumulative effects assessment, in line with the MSS advice.

5.9 Shipping and Navigation

- 5.9.1 The Scottish Ministers are broadly content with regards to the proposed study area identified in section 2.8 of the Scoping Report. However, the Scottish Ministers advise that the Developer must extend the routeing area beyond the 10nm study area particularly at the Western extent to account for possible deviations around Skerry Rocks. This is a view supported by the UKCoS representation which must be addressed in full by the Developer. Additionally, in line with the representation from the RYA, the Scottish Ministers advise that the 10nm buffer zone should be amended and extend from Cape Wrath to Sule Skerry to a point 5nm of the northernmost point of the OAA, to ensure that the European Marine Energy Centre Billia Croo site, the Sutherland Space Hub, and the MOD Cape Wrath Range are included and considered when assessing in-combination effects.
- 5.9.2 With regards to the baseline data presented within table 2-47 of the Scoping Report, the Scottish Ministers direct the Developer to the representation from the UKCoS. The Scottish Ministers advise that the Marine Accident Investigation Branch (“MAIB”) spatial accident data included within the EIA Report must be increased from 10 years to 20 years to fully assess trends and historic collision incidents.
- 5.9.3 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 the UKCoS that an additional full 12 months of AIS data should be included 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. Only AIS data from either 2019 or 2021 must be utilised within the EIA Report due to the impact of the Covid-19 pandemic on shipping, and in particular cruise and passenger traffic, during 2020.

- 5.9.4 The Developer is also directed to the representation from the RYA regarding impacts of construction activities should a cable landfall route through Hoy Sound be chosen. The Scottish Ministers advise the Developer that the EIA Report and Navigational Risk Assessment must detail how the volume of traffic and timing of construction activities have been considered to avoid adverse tidal flows.
- 5.9.5 Table 2-50 of the Scoping Report summarises the potential impacts to shipping and navigation for each phase of the Proposed Development which the Developer proposes to scope into the EIA Report. The Scottish Ministers agree with the impacts scoped into the EIA Report, however advise that in line with the representation from OIC, impacts to ferry routes should be scoped into the EIA Report.
- 5.9.6 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 and in particular where depths are decreasing towards shore.
- 5.9.7 The Scottish Ministers advise the Developer must give consideration within the EIA Report for the potential effect of electromagnetic deviation on ships' compasses should High-Voltage Direct Current transmission infrastructure be installed. For completeness, the Scottish Ministers highlight the advice from MCA regarding maximum deviation from the cable route.
- 5.9.8 The Scottish Ministers also highlight the MCA representation regarding Search and Rescue ("SAR"), Emergency Response Co-operation Plans, levels of radar surveillance, AIS and shore-based VHF radio coverage. The Scottish Ministers advise that the MCA representation must be fully addressed within the EIA Report and that a SAR checklist must be completed by the Developer in consultation with the MCA.
- 5.9.9 The Developer has summarised potential cumulative effects in section 2.8.7 of the Scoping Report. The Scottish Ministers advise that the Developer must assess the potential cumulative and in combination effects on shipping routes due to the significant through traffic in the area of the Proposed Development, in line with the MCA representation.
- 5.9.10 For completeness, the Developer should note, if floating foundations are selected the MCA confirmed that compliance with regulatory expectations for floating infrastructure as stated in Table 2-51 is required and Third-Party

Verification of the mooring arrangements will be required. The MCA highlighted that the IALA recommendations 0-139 Marking of Man-Made Offshore Structures has been replaced by G1162 ED1.0.

5.10 Marine Archaeology and Cultural Heritage

- 5.10.1 The Scottish Ministers are broadly content with the Study Area as defined in Figure 2-39 in section 2.9 of the Scoping Report and that the baseline data gathered is appropriate for the assessment. The Scottish Ministers advise that the list of charted wrecks in Scapa Flow provided in Table 2-56 of the Scoping Report should be updated to include HMS Vanguard north of Flotta which is protected under the Protection of Military Remains Act 1986. Additionally, the Developer is advised to refer to the representation from THC to ensure that all designated sites are identified and considered with the EIA Report.
- 5.10.2 With regards to the export cable route from Hoy to Flotta within Scapa Flow, the Scottish Ministers draws the Developers attention to the HES representation with regards to the search area overlap with the proposed Scapa Flow Historic Marine Protected Area (“pHMPA”). In line with the advice from HES, the Scottish Ministers advise that the Scapa Flow pHMPA in its entirety must be excluded from the cable corridor search area.
- 5.10.3 In Table 2-60 of the Scoping Report the Developer summarises the potential impacts to marine archaeology and cultural heritage during different phases of the Proposed Development. The Scottish Ministers are broadly content with the impacts proposed to be scoped into the EIA Report.
- 5.10.4 For completeness, the Developer should note that the HES representation confirms that the HES 2016 version of ‘Managing Change in the Historic Environment’ guidance, referenced in Table 2-61 of the Scoping Report, has been completely superseded and should not be referenced or relied upon as part of the assessment within the EIA Report.

5.11 Military and Aviation

- 5.11.1 The Scottish Ministers highlight the representations from NATS and Highland and Islands Airports Limited which have no objection to the Proposed Development on the basis that it does not conflict with the HIAL or NATS safeguarding criteria. However, this view is based solely on the information provided within the Scoping Report, therefore the Scottish Ministers advise that the HIAL and NATS must be consulted on any revised or amended information prior to submission of the EIA Report. This view is supported by HIAL, NATS and THC.

- 5.11.2 The Scottish Ministers are broadly content with the study area as defined in Figure 2-41 of the Scoping Report and that the baseline data gathered for the assessment is appropriate. The Scottish Ministers highlight the representation from BT which states that the Proposed Development will likely cause interference to BT's current and presently planned radio network. The Developer must include the exact co-ordinates of the turbines in the EIA Report to allow assessments to be made around clearance of any structure that passes BT's radio path.
- 5.11.3 In Table 2-65 of the Scoping Report the Developer summarises the potential impacts to Military and Aviation during all phases of the Proposed Development. The Scottish Ministers broadly agree with the impacts that are scoped into and out of the EIA Report. However, in line with the representations from NATS, HIAL and THC, the Scottish Ministers advise direct consultation with NATS Safeguarding and HIAL is undertaken regarding the scope of the assessment. Additionally, the Scottish Ministers advise that if it is identified there are no predicted effects then this should still be recorded within the EIA Report.
- 5.11.4 In Section 2.12.4.1.3 of the Scoping Report the Developer references the location of military and defence activity at Cape Wrath in relation to the Proposed Development. The Scottish Ministers direct the Developer to the representation from MOD and the concerns that it has expressed over the Proposed Development and the potential impact that it will have on military training activities held at Cape Wrath. The Scottish Ministers agree that this should be scoped in and advise that it is essential that further assessment is undertaken and that the concerns expressed by MOD are fully addressed within the EIA Report. For the avoidance of doubt, the Scottish Ministers note that any impact on the function and capability at Cape Wrath will result in an objection to the Proposed Development from MOD.
- 5.11.5 The Scottish Ministers would like to direct the Developer to the representation from MOD and advise it is necessary to consult with MOD in relation to the refinement of the cable route options and landfall locations. For completeness, the Scottish Ministers further highlight the MOD representation in relation to lighting and charting of WTGs.

5.12 Seascape, Landscape and Visual

- 5.12.1 The Developer describes the proposed study area in section 2.11 of the Scoping Report. In line with the representation from NatureScot, the Scottish Ministers advise that the scope and extent of the study area must be refined for inclusion within the EIA Report. The Scottish Ministers advise that the Developer must consider the assessment and design guidance referred to in the advice from NatureScot and undertake further consultation with NatureScot, OIC, THC and

any other relevant stakeholders to finalise the maximum design scenario within the EIA Report.

- 5.12.2 With regards to the baseline data gathered in support of the assessment, the Scottish Ministers highlight the representation from NatureScot with regards to the assessment of the Caithness and Orkney coasts and consideration of the Hoy and West Mainland National Scenic Area (“NSA”), and advise that this must be fully addressed within the EIA Report.
- 5.12.3 In Table 2-68 of the Scoping Report, the Developer has provided a list of proposed viewpoints based upon the key seascape, landscape and visual receptors identified in the zone of theoretical visibility (“ZTV”) study area. The final list of viewpoints must be agreed with NatureScot, OIC and THC
- 5.12.4 In Table 2-71 of the Scoping Report the Developer summarises the potential impacts on seascape, landscape and visual receptors to be scoped in or out of the EIA Report for each phase of the Proposed Development. The Scottish Ministers, in agreement with the representation from NatureScot and THC, advise that the effects on Wild Land Area’s and NSAs must be scoped in for all phases of the Proposed Development. In line with the OIC representation, the impacts on the setting of historical environmental assets, and in particular The Heart of Neolithic Orkney World Heritage Site and coastal scheduled monuments, must be scoped into the assessment, and be clearly linked with the Marine Archaeology and Cultural Heritage chapter of the EIA Report. As highlighted in the NatureScot and THC representations, the Scottish Ministers advise that construction and decommissioning effects from the Proposed Development on the landscape and visual receptors, must be scoped into the EIA Report. Impacts from OSP and any temporary accommodation must be scoped in to the EIA Report as detailed in the THC representation. Additionally, in line with the representation from the THC, the Scottish Ministers advise that the Landscape and Visual Impact Assessment included within the EIA Report must include the impact on tourist and recreational routes including core paths including the national cycle network and long distance trails. A route assessment should also be included to consider the impact on road users as detailed in the THC representation.
- 5.12.5 For completeness, the visual representation of viewpoints must be included within the EIA Report and photomontages must satisfy both NatureScot and THC requirements.
- 5.12.6 With regards to proposed methodology for the impact assessment, the Scottish Ministers highlight the NatureScot representation and the availability of draft guidance on artificial lighting which should be considered to inform the assessment of navigation and aviation lighting on WTG’s. Additionally, the draft

guidance in relation to the effects on special qualities of NSAs should also be considered in the assessment.

- 5.12.7 With regards to cumulative assessment presented within the EIA Report, the Scottish Ministers advise that the Developer must fully address the requirements as detailed in THC representation.
- 5.12.8 The Scottish Ministers direct the Developer to the advice from Visit Scotland regarding the importance of scenery to tourism. Advice on tourism impacts are addressed in the Socio-Economics paragraphs of this Scoping Opinion.

5.13 Other Sea Users

- 5.13.1 With regards to the proposed study area, the Scottish Ministers advise that the Developer must extend the routing area and buffer zone study area, as detailed within paragraph 5.10 of the Shipping and Navigation section of this Scoping Opinion.
- 5.13.2 The Scottish Ministers broadly agree with the potential impacts scoped in for further assessment in the EIA Report as contained in Table 2-76 of the Scoping Report. However, in line with the advice from OIC, the Scottish Ministers advise that impacts on ferry services, and the communities that use those services, must be scoped into the EIA Report for all phases of the Proposed Development.
- 5.13.3 The Scottish Ministers note that the RYA recommends including impacts on recreational boating when assessing shipping and navigation and that OIC recommended that impacts on ferry services also be included in relation to shipping and navigation. To prevent duplication, the Scottish Ministers advise that the Developer must assess the impacts on recreational boating and ferry services within the Shipping and Navigation chapter of the EIA Report.

5.14 Offshore Air Quality, Airborne Noise and Vibration

- 5.14.1 The Scottish Ministers are broadly content with the study area identified within section 2.13 of the Scoping Report and that the baseline data gathered for the assessment is appropriate and agree that all impacts, as detailed in Table 2-82 of the Scoping Report, can be scoped out of the EIA Report, although THC response is highlighted in relation to certain circumstances where a noise assessment may be required.

5.15 Socio-economics

- 5.15.1 The Scottish Ministers are broadly content with the study area identified within the Scoping Report. In regards to baseline data, The Scottish Ministers, in line with the MAU advice, advise that the baseline data outlined in Table 2-83 of the Scoping Report is appropriate for desk based economic impacts, but is not appropriate to fully consider the social impacts.
- 5.15.2 In line with the representation from the MAU, and OIC 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 and assumptions and includes details of primary data to fully assess the social impacts, in addition to the economic impacts, for all phases of the Proposed Development. This is a view supported by the MAU, OIC and THC.
- 5.15.3 In line with the representation from the MAU, the Scottish Ministers disagree with the Developer’s proposal to scope out socio-cultural effects and distributional effects within Table 2-88 of the Scoping Report and advise that this must be scoped in for all phases of the Proposed Development. The Scottish Ministers broadly agree with the remaining impacts scoped in and direct the Developer to the representations from the MAU and THC regarding the content of the SEIA and advises that this should be fully addressed.
- 5.15.4 The Scottish Ministers advise that a tourism impact assessment must be included within the SEIA, this is in line with advice from the MAU and OIC. However, the Developer must consider within the SEIA, the visual, environmental and economic impacts on tourism as detailed in the Visit Scotland representation. In line with the OIC representation, the SEIA must include impacts on recreational and historical assets within the study area.
- 5.15.5 The Scottish Ministers advise that the Developer must consider socio-economic impacts to the Orkney economy within the SEIA as detailed in the representation of OIC. The Developer should establish a baseline of the Orkney economy through consultation with OIC.
- 5.15.6 The Developer has summarised potential cumulative effects in section 2.14.7 of the Scoping Report. The Scottish Ministers broadly agree with the projects and activities for consideration however advise that the Developer must consider the cumulative impacts within the SEIA as advised in the representation from the MAU. In line with the representation from the MAU, the Scottish Ministers agree that transboundary effects are not required to be assessed.

- 5.15.7 With regards to the location of the Development, the Scottish Ministers direct the Developer to the representations from the OFA and MAU regarding the potential loss of fishing grounds, potential reduction in catch sizes due to noise and EMFs, and the subsequent impacts on local companies reliant on commercial species caught within the Proposed Development area. The Scottish Ministers agree that these impacts must be fully assessed and included within the SEIA.

5.16 Traffic and Transport

- 5.16.1 The Scottish Ministers note that Traffic and Transport specifically in relation to the offshore infrastructure has not been included within the Scoping Report. The Scottish Ministers agree with the representation from TS that the impacts associated with the construction, operation, maintenance and decommissioning of the offshore elements of the Proposed Development should be scoped in to the EIA Report. The Developer is directed to the representation made by THC and is advised to fully address the guidance provided with regards to a Construction Traffic Management Plan.

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 6 of the 2017 MW Regulations, 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 (Natural Habitats, &c.) Regulations 1994 and 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 The Scottish Ministers strongly advise the production of a HRA screening report for the Proposed Development and recommend that this should be submitted for comment at the earliest opportunity and in advance of the submission of the EIA Report in order to fully inform the HRA advice for the Proposed Development.
- 6.1.4 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 or regulatory approval 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 (the definition in the 2017 MW Regulations provides for the same but in relation to “regulatory approvals”): *“application for multi-stage consent” means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun*”.
- 7.1.3 A section 36 consent or marine licences, if granted, by the Scottish Ministers for the Proposed Development, may have several conditions attached requiring approvals etc. which fall under this definition, for example the approval of a CMS. When making an application for multi-stage consent or regulatory approval 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 or regulatory approval 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.

Jane Renwick

29 JUNE 2022

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

Developer to complete:

Consultee	No.	Point for Inclusion	EIA Report Section	Justification
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