



T: +44 (0)300 244 5046
E: MS.MarineRenewables@gov.scot

Marine Scotland - Licensing Operations Team

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

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

and

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

Pentland Floating Offshore Wind Farm

16 May 2022

Contents

1. Introduction	2
1.1 Background	2
2. The Proposed Development	4
2.1 Introduction	4
2.2 Background	4
2.3 Description of the Proposed Development	5
2.4 Onshore/Planning	6
2.5 The Scottish Ministers' Comments	6
3. Contents of the EIA Report	9
3.1 Introduction	9
3.2 EIA Scope	9
3.3 Mitigation and Monitoring	9
3.4 Risks of Major Accidents and/or Disasters	10
3.5 Climate and Greenhouse Gases	10
4. Consultation	11
4.1 The Consultation Process	11
4.2 Representations received	13
5. Interests to be considered within the EIA Report	14
5.1 Introduction	14
5.2 Fish and Shellfish Ecology	14
5.3 Marine Mammals and Other Megafauna	14
5.4 Ornithology	16
5.5 Aviation and Radar	16
5.6 Seascape, Landscape and Visual Impact	16
5.7 Commercial Fisheries	16
5.8 Benthic Ecology	17
5.9 Other Users of the Marine Environment	17
6. Application and EIA Report	18
6.1 General	18
7. Multi-Stage Consent and Regulatory Approval	19
7.1 Background	19
Appendix I: Consultation Responses & Advice	20
Appendix II: Gap Analysis	21

1. Introduction

1.1 Background

- 1.1.1 On 17 December 2021, the Scottish Ministers received a scoping report (“the Scoping Report”) from Highland Wind Limited (“the Developer”) as part of its request for a scoping opinion relating to Pentland Floating Offshore Wind Farm (“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”) and regulation 12 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 EW 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 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 A scoping opinion was previously adopted by the Scottish Ministers in respect of the Proposed Development on 28 September 2021 (“the 2021 Pentland Scoping Opinion”). A number of project parameters have since been revised, as detailed in the Scoping Report. This Scoping Opinion covers any changes to impacts as a result of the changes to project parameters and is to be treated as an addendum to the 2021 Pentland Scoping Opinion. For the avoidance of doubt, the 2021 Pentland Scoping Opinion remains extant in relation to the revised project parameters except where otherwise indicated in this Scoping Opinion.
- 1.1.4 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.

- 1.1.5 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”).
- 1.1.6 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 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.
- 1.1.7 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 Background

2.2.1 The Proposed Development is an update to the Dounreay Tri Floating Wind Demonstration Project ("the Dounreay Tri Project") which was granted consent under the 1989 Act in 2017 but not constructed. The Scottish Ministers granted a s.36 consent under the 1989 Act with deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") for the construction and operation of the Dounreay Tri Project, including a declaration under section 36A of the 1989 Act, on 16 March 2017. The Scottish Ministers also granted two marine licences under the 2010 Act for the construction of the offshore generating station and offshore transmission infrastructure on 16 March 2017. Both marine licences were subsequently varied on 23 July 2019 and again on 8 June 2021.¹

2.2.2 The Proposed Development infrastructure, which is included in the s.36 consent and/or the marine licences, consists of:

- Up to two wind turbine generators ("WTGs") with a maximum installed capacity of up to 12 megawatts ("MW");
- A single floating, semi-submersible, column stabilised platform;
- A single export cable to bring the power to shore immediately to the West of the Dounreay Nuclear Site fence line;
- Associated scour protection; and
- Associated onshore electrical infrastructure to connect at, or near, the existing Dounreay 132/33/11 kilovolt ("kV") substation (subject to a connection offer from Scottish and Southern Energy Power Distribution).

2.2.3 The Developer is currently exploring the option of utilising variations to the existing s.36 consent without deemed planning permission, the section 36A declaration and the marine licences to construct and operate the Pentland Floating Offshore Wind Demonstrator Project ("the Demonstrator") in advance of the Proposed Development. The Developer has stated that the Demonstrator and the Proposed Development will be consented and

¹ <https://marine.gov.scot/ml/dounreay-tri-floating-wind-demonstration-project>

constructed separately. However, the Demonstrator will ultimately form part of the Proposed Development. The Demonstrator is anticipated to be constructed and operational by 2024.

2.3 Description of the Proposed Development

2.3.1 The Proposed Development will comprise of an offshore generating station located within 12 nautical miles (“nm”), 6.5 kilometres (“km”) off the coast of Dounreay, Caithness. As the Proposed Development will have an installed capacity of up to 100MW² it requires the Scottish Ministers’ consent under s.36 of the 1989 Act to allow its construction and operation. Any proposal to construct or operate a generating station situated in the Scottish Territorial sea (out to 12nm from the shore), with a generating capacity of 1MW³ or greater, requires the Scottish Ministers consent under section 36 of the 1989 Act. The construction of the Proposed Development will also require marine licences granted by the Scottish Ministers under 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.

2.3.2 The parameters of the Proposed Development which have been revised since the adoption of the 2021 Pentland Scoping Opinion and which are considered in this Scoping Opinion are:

- Number of wind WTGs to change from between 6 and 10 WTGs to simply a maximum of 10 WTGs;
- Maximum hub height of WTGs to increase from 150m to 190m;
- Maximum upper blade tip height of WTGs to increase from 270m to 300m⁴;
- Maximum rotor diameter of WTGs to increase from 240m to 260m;
- Maximum proportion of depth above water for the floating substructure to increase from 15m to 30m;
- Moorings to increase from between 3 and 6 moorings per WTG to between 3 and 12 moorings per WTG;
- Spread radius of moorings to increase from 600m to up to 1,250m;
- Anchors to increase from up to 6 anchors per WTG to between 3 and 12 anchors per WTG; and

² The Scoping Report explains that the Proposed Development including the Demonstrator will not exceed an installed capacity of up to 100MW.

³ The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002 modified section 36(2) of the 1989 Act

⁴ The Developer has noted that the maximum tip height of the WTGs has not yet been decided. If a 300m tip height is required it is likely only five turbines will be needed to reach the total project capacity. If smaller turbines were installed up to ten turbines may be required to reach the total project capacity.

- Piling of between 3 to 12 driven piles per WTG, with each pile being up to approximately 8m in diameter. Previously scoped drilled piles remain an option.

2.3.3 All other parameters remain the same and the Proposed Development is in the same location as when it was previously scoped.

2.3.4 The construction of the Proposed Development is anticipated to commence in 2025, as detailed in section 1.1 of the Scoping Report. The operational lifetime of the Proposed Development is expected to be a minimum of 25 years.

2.3.5 It is noted that the Scoping Report details the 'Proposed Development' but does not clearly establish all activities for which 'regulatory approval'⁵ will be sought. Regulatory approvals will be required for all construction activities, whether as part of the original construction or any subsequent alteration or improvement including decommissioning, 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 the Scoping Opinion should be taken, as appropriate, to include all activities in connection with the construction, operation, maintenance (including "change-outs" of components) and decommissioning of the 'Proposed Development' for which a regulatory approval will be needed.

2.4 Onshore/Planning

2.4.1 The Scottish Ministers are aware the Developer is now planning to complete and submit the onshore EIA Report in respect of the associated onshore buried cable and substation works separately to the offshore EIA Report in respect of the Proposed Development, as opposed to its previous intention to seek a direction from the Scottish Ministers under section 57(2) of the 1997 Act that planning permission for the onshore transmission infrastructure be deemed to be granted as part of the s.36 consent application. 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 so 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.

2.5 The Scottish Ministers' Comments

Description of the Proposed Development

⁵ Regulatory approval is defined as a 'marine licence' in The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

- 2.5.1 Chapter 2 of the Scoping Report details the parameters proposed to be changed compared with the 2021 Pentland Scoping Opinion. The Scottish Ministers highlight the observation made by The Highland Council in its representation that, based on the information provided in table 2.1, if the maximum rotor diameter and maximum hub height was employed, along with the revised depth above water of the floating substructure the overall tip height would exceed 300m. The Scottish Ministers advise that this must be clarified in the EIA Report.
- 2.5.2 Additionally, the Scottish Ministers note that the maximum tip height of the turbine is not yet decided – if a 300m tip height is required the Developer has detailed that it is likely only five turbines will be needed to be deployed to reach the total project capacity. The Scottish Ministers advise that the EIA Report should include a full and detailed description of all WTG options for the Proposed Development and must assess the total worst case scenario.
- 2.5.3 Table 2.1 also indicates that, should the new option of driven piles be taken forward, there will be between 3 and 12 driven piles per WTG, with each pile being up to approximately 8m in diameter. The Developer should include a full and detailed description of the piling solution for the Proposed Development and must assess the total worst case scenario in the EIA Report.

Design Envelope

- 2.5.4 The Scottish Ministers note the Developer's continued 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 chapter 2 of the Scoping Report.
- 2.5.5 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.
- 2.5.6 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.

- 2.5.7 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

- 2.5.8 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 advise 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
- 2.5.9 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 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 has indicated in the Scoping Report that major accidents and disasters are to be considered in relation to the onshore development. The Scottish Ministers wish to highlight that this must also be considered in relation to the offshore Proposed Development. 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.

3.5 Climate and Greenhouse Gases

- 3.5.1 The Scottish Ministers are mindful that Greenhouse Gas (“GHG”) emissions from all projects contribute to climate change and advice was provided in the 2021 Scoping Opinion in this regard. The Scottish Ministers advise that the previous advice remains extant however wish to highlight that the IEMA Environmental Impact Assessment Guide “Assessing Greenhouse Gas Emissions And Evaluating Their Significance” has been updated in 2022 and the assessment in the EIA Report should be based on the latest guidance.

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 23 December 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*
- Angling Orkney
- Bettyhill, Strathnaver and Altnaharra Community Council
- Birsay Community Council
- Brims - Open Hydro
- **BT (Radio Network Protection Team) (“BT”)**
- Caithness and Sutherland Visitor Attractor Group
- Caithness Chamber of Commerce
- Caithness Kayak Club
- Caithness West Community Council
- Castletown Community Council
- **Civil Aviation Authority**
- Community Inshore Fishery Alliance
- Crown Estate Scotland
- **Defence Infrastructure Organisation (Ministry of Defence) (“MOD”)**
- Develop Durness Group
- District Salmon Fishery Board - Caithness
- *District Salmon Fishery Board - Northern (“Northern DSFB”)*
- Dounreay Site Restoration Limited
- Dounreay Stakeholder Group
- Dunnet and Canisbay Community Council
- Durness Community Council
- **Fisheries Management Scotland (“FMS”)**
- Graemsay, Hoy and Walls Community Council
- Harray and Sandwick Community Council
- **Highlands and Islands Airport Limited (“HIAL”)**
- Highlands and Islands Enterprise
- **Historic Environment Scotland (“HES”)**
- Inshore Fishery Group
- Joint Radio Company
- Marine Planning and Policy
- Marine Safety Forum

- Marine Scotland Compliance (Scrabster Fishery Office)
- **Maritime and Coastguard Agency (“MCA”)**
- Melvich Community Council
- *Meygen*
- **National Air Traffic Services (“NATS”)**
- National Trust for Scotland
- North Shore Surf Club
- **Northern Lighthouse Board (“NLB”)**
- NorthLink Ferries
- Nuclear Decommissioning Authority
- **NatureScot (operating name of Scottish Natural Heritage)**
- Oil and Gas UK
- Orkney Ferries
- Orkney Fisheries Association
- *Orkney Harbours*
- **Orkney Islands Council (“OIC”)**
- Orkney Islands Sea Angling Association
- Orkney Sailing Club
- Pentland Firth Yacht Club
- **Port Authority – The Highland Council**
- Reay Golf Club
- **Royal Society for the Protection of Birds (“RSPB”)**
- **Royal Yachting Association Scotland (“RYA Scotland”)**
- Scottish Canoe Association
- Scottish Creel Fishermen’s Federation
- **Scottish Environmental Protection Agency (“SEPA”)**
- **Scottish Fishermen’s Federation (“SFF”)**
- Scottish Fishermen’s Organisation
- **Scottish Forestry**
- Scottish Government Planning
- **Scottish and Southern Energy (“SSE”)**
- Scottish Pelagic Fishermen’s Association
- *Scottish Sea Farms*
- Scottish Sub Aqua Club
- Scottish Surfing Federation
- **Scottish Water**
- Scottish Wildlife Trust
- Scrabster Harbour Authority
- Seafish
- Sports Scotland
- Strathy & Armadale Community Council

- Stromness Community Council
- Surfers Against Sewage
- The Fisheries Liaison with Offshore Wind and Wet Renewables Group
- **The Highland Council (“THC”)**
- Thurso Community Council
- Tongue Community Council
- *UK Chamber of Shipping (“UKCoS”)*
- Visit Scotland
- *Whale and Dolphin Conservation*
- *Wick Harbour*

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

4.2 Representations received

4.2.1 From the list above a total of 28 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 Fish and Shellfish Ecology

5.2.1 Within table 4.1 of the Scoping Report the Developer summarises the potential impacts to fish and shellfish ecology associated with the change in parameters. The Scottish Ministers broadly agree with the impacts to be scoped in however, advise that the NatureScot representation and advice from MSS must be fully addressed by the Developer. In particular, the greater area of seabed to be impacted must be considered in the EIA Report in terms of disturbance and loss of habitat supporting fish and shellfish.

5.2.2 Section 4.2 of the Scoping Report summarises the changes to method of assessment proposed by the Developer due to the introduction of pile driving activities which involves underwater noise propagation modelling and a comparative exercise. The Scottish Ministers agree with the method proposed but advise that the modelling should follow a precautionary approach to determine the worst-case scenario where fish do not flee from the noise, in line with the MSS advice.

5.2.3 In relation to diadromous fish, the Scottish Ministers advise that the advice from MSS must be fully addressed by the Developer, including the scoping in of foraging areas to cover, for example, sea trout. For the avoidance of doubt, all impacts scoped in in relation to marine fish and shellfish must also be scoped in for diadromous fish. The Scottish Ministers also highlight the MSS advice which directs the Developer to the proposed river gradings for salmon rivers for 2022 which are now available.

5.3 Marine Mammals and Other Megafauna

5.3.1 With regards to the updated baseline detailed in section 5.1 of the Scoping Report, the Scottish Ministers highlight the additional reports and updated references recommended by NatureScot and MSS. These reports and references must be included in the review of the baseline data and fully considered in the EIA Report.

- 5.3.2 Within table 5.2 of the Scoping Report the Developer summarises the potential impacts to marine mammals and other megafauna associated with the change in parameters. With the inclusion of driven piles, the primary impact pathway of concern for marine mammals from this project is now underwater noise during the construction phase. As regards the number of mooring lines, number of anchors and mooring spread, while Scottish Ministers agree that the impacts from these altered parameters are not new, nor will they change the assessment methodology, the risk of entanglement may increase. This view is supported by the MSS advice and the Scottish Ministers advise that MSS' recommendations on additional impacts must be fully implemented in the EIA Report.
- 5.3.3 Given the expected increases in underwater noise emissions as a result of the inclusion of driven piles, the Scottish Ministers agree that it will be necessary to update the methods of assessment to include appropriate underwater noise modelling techniques and advise that a suitable site specific, range dependent, underwater noise propagation model should be used. A detailed methodology and the assumptions used in the underwater noise modelling should be provided in the EIA Report and the Scottish Ministers direct the Developer to the additional advice provided by MSS as regards the prediction of permanent threshold shift ("PTS") onset and disturbance and recommend this is followed. The Scottish Ministers agree with the use of the harbour porpoise dose-response curve for other cetacean species and the use of the harbour seal dose-response curve for grey seals, as supported by MSS advice.
- 5.3.4 As regards the assessment of disturbance from piling, the Scottish Ministers direct the Developer to the NatureScot representation in respect of other sources of density information and advise that these are fully considered in the EIA Report to more accurately reflect the species using the marine area around the Proposed Development, taking into account any seasonal differences in their population densities.
- 5.3.5 The Scottish Ministers agree with the Developer regarding the use of Interim Population Consequences of Disturbance ("iPCoD") for quantifying the population-level consequences of disturbance and PTS for harbour porpoise, bottlenose dolphin, minke whale, grey seals and harbour seals. However, as this approach is not possible for Risso's dolphin and white-beaked dolphin, the Scottish Ministers advise that an alternative quantitative approach that predicts the numbers of individuals expected to be impacted should be carried out for these species. The Developer must present this data within the context of population size and conservation status within the EIA Report. This view is supported by the MSS advice.

5.4 Ornithology

- 5.4.1 Within table 6.1 of the Scoping Report the Developer summarises the potential impacts to ornithology associated with the change in parameters. The Scottish Ministers agree with the conclusion of the Scoping Report that no changes to the methodology for ornithological assessment are required however, highlight the representation from the RSPB that due consideration be given to increasing the 'air gap' as a key mitigation measure. The Scottish Ministers further advise that the Developer clarifies in the EIA Report how the potential increase in spread of the WTG moorings relates to the ornithological survey area being expanded from 2km to 4km and how far the moorings are to extend into the buffer zone, as per the RSPB representation.

5.5 Aviation and Radar

- 5.5.1 Within table 7.1 of the Scoping Report the Developer summarises the potential impacts to aviation and radar associated with the change in parameters. The Scottish Ministers agree with the additional impacts proposed to be scoped in however, advise that the representations from THC, MOD and HIAL, must be fully addressed by the Developer. The Scottish Ministers further advise that the Developer approaches HIAL to discuss how best to address/mitigate any impacts to HIAL, as per its representation.
- 5.5.2 The Scottish Ministers highlight the representation from THC which advises that the WTGs may be in proximity to both the launch zone and projected route of launch vehicles using the Sutherland Spaceport. The Scottish Ministers therefore consider that this must be scoped in and considered within the aviation and radar chapter of the EIA Report.

5.6 Seascape, Landscape and Visual Impact

- 5.6.1 Within table 8.1 of the Scoping Report the Developer summarises the potential impacts to seascape, landscape and visual impact associated with the change in parameters. The Scottish Ministers agree with the conclusion of the Scoping Report that no changes to the methodology for the seascape, landscape and visual impact assessment and the scope of the receptors are required, as supported by representations from OIC and THC. The Scottish Ministers however highlight THC's representation that the list of viewpoints still need to be agreed with itself and NatureScot.

5.7 Commercial Fisheries

- 5.7.1 In chapter 3 of the Scoping Report, the Developer notes that it has not reconsidered commercial fisheries as there would be no pathway to impact from the project changes compared with the 2021 Pentland Scoping Opinion. While the Scottish Ministers agree that these increases are not new impacts and the approach to assessing them will not alter, there will be an increase in the project spatial footprint with the added complexity of more subsea infrastructure. This will increase the area unavailable to some types of commercial fishing practices, mainly mobile gear, due to safety concerns and the risk of snagging gear as highlighted by the MSS advice and representation from the SFF. In line with the MSS advice, the Scottish Ministers advise that this should be considered within the fisheries displacement assessment.

5.8 Benthic Ecology

- 5.8.1 Chapter 3 of the Scoping Report details that benthic ecology has not been reconsidered due to a lack of pathway to impact from the project changes compared with the 2021 Pentland Scoping Opinion. Again, while the Scottish Ministers agree that these increases are not new impacts and the approach to assessing them will not alter, the new worst case parameters will result in a much greater area of the seabed being impacted. The Scottish Ministers advise that this should be considered in the EIA Report in terms of disturbance and loss of benthic habitat, as supported by the NatureScot representation.

5.9 Other Users of the Marine Environment

- 5.9.1 Chapter 3 of the Scoping Report also details that other users of the marine environment have not been reconsidered due to a lack of pathway to impact from the project changes compared with the 2021 Pentland Scoping Opinion. The Scottish Ministers however highlight the response from SSE requesting the inclusion a chart showing all proposed developments in the area and, if possible, proposed vessel management and delivery routes in order to mitigate impacts on Orkney to Dounreay high voltage alternating current (“HVAC”) cable. The Scottish Ministers advise that this should be included in the EIA Report.

6. Application and EIA Report

6.1 General

- 6.1.1 The EIA Report must be in accordance with the EIA Regulations and the Scottish Ministers draw your attention in particular to, regulation 6 of the 2017 MW Regulations and regulation 5 of the 2017 EW 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 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 note that a separate HRA screening report for the Proposed Development has been submitted by the Developer. The Scottish Ministers will provide a response to this separately to the Scoping Opinion.
- 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 s.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.

Rebecca Bamlett

16 May 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.