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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**

**Caledonia Offshore Wind Farm**

**January 2023**

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## 1. Introduction

### 1.1 Background

- 1.1.1 On 16 September 2022 the Scottish Ministers received a scoping report (“the Scoping Report”) from Caledonia Offshore Wind Farm Limited (“the Developer”) as part of its request for a scoping opinion relating to Caledonia 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”), 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.
- 1.1.7 The Developer submitted a Habitats Regulations Appraisal (“HRA”) screening report (“HRA Screening Report”) separate from the Scoping Report on 3 October 2022 in relation to the Proposed Development. The Scottish Ministers response to the HRA Screening Report is however contained within the relevant receptor chapters of this Scoping Opinion. In addition, the Scottish Ministers advise that the representations from NatureScot and Royal Society for the Protection of Birds (“RSPB”) on the HRA Screening Report must be fully reviewed and addressed by the Developer.

## **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 in the Moray Firth, with the northern limit approximately 22km from Wick and the southern limit approximately 38km from Banff. The Proposed Development will have a capacity of greater than 50 Megawatts ("MW") and therefore requires the Scottish Ministers' consent to allow its construction and operation. The Proposed Development will also require 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.

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 be a combination of fixed bottom foundations and floating substructures. Five fixed bottom and two floating WTG foundation options are under consideration. In addition, up to six export cables are proposed within an extensive area of search. The National Grid ESO has stated that the grid connection point for Caledonia Offshore Wind Farm will be at New Deer, located in Aberdeenshire. The landfall locations for the export cables are yet to be decided. Multiple locations have been assessed between Sandend and Macduff on the Aberdeenshire coastline of the Moray Firth as shown in Figure 1.1 of the Scoping Report.

2.2.3 The area of the Proposed Development in which the WTGs, inter-array cables, inter-connector cables and Offshore Substation Platforms ("OSPs") are located is termed the Array Area and is within the NE4 ScotWind Plan Option. The Array Area is approximately 429km<sup>2</sup>.

2.2.4 The Proposed Development will have an installed capacity of approximately 2 Gigawatts ("GW"). 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:

- A minimum of 84 WTGs and a maximum of 150 with capacities ranging from 14MW to 25MW.
- An indicative split of up to 111 fixed foundations WTGs and 39 floating foundations WTGs.
- Five fixed bottom WTG foundation options are being considered: monopile, fully restrained platform (“FRP”), jacket with pin piles, jacket with suction caissons and Gravity Based Structure (“GBS”).
- Two floating WTG foundation options are being considered: semi-submersible and tension leg platform.
- Rotor diameter of 236m (minimum) to 310m.
- Maximum nacelle height of 200m above Mean Sea Level (“MSL”).
- Maximum blade tip height of 350m above MSL.
- Minimum blade tip clearance of 35m above MSL.
- Inter-array cabling with an assumed total length of 720km and up to five interconnector cables with a total length of up to 135km.
- Up to six export cables with an indicative total cable length of 610km.
- Cables will be buried where practicable, and mechanical protection such as concrete mattresses, rock placement and grout bags will be used where intended depth of burial not achieved.
- Up to six OSPs with foundations to be decided. Foundation options under consideration include; jacket with pin piles, jacket with suction caissons, monopile and GBS.
- Maximum OSP height of 35m to 75m above lowest astronomical tide.

2.2.5 The Proposed Development includes both fixed and floating WTG foundation options. Although water depths in the Array Area vary from 40m to 100m, most of the area is shallow enough to allow construction of fixed foundations and therefore indicatively 75% of the Array Area could be constructed using fixed foundations. An indicative split of 307km<sup>2</sup> for fixed foundations in the north of the Array Area and 122km<sup>2</sup> for floating foundations in the south has been provided by the Developer in the Scoping Report.

2.2.6 Commencement of onshore construction is currently anticipated to begin in 2027 with a duration of 2.5 years and commencement of offshore construction is anticipated to begin in 2028 with a duration of 3 years, with the aim of generating first power in 2029.

## 2.3 Onshore Planning

2.3.1 The Scottish Ministers are aware the Developer has sought a separate scoping opinion from Aberdeenshire Council for the associated onshore

transmission infrastructure and grid connection works. 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.

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

### *Description of the Proposed Development*

- 2.4.1 Section 3.1.1.1 of the Scoping Report states that detailed project design will be ongoing throughout the EIA and pre-construction phase and therefore the description of the Proposed Development is indicative and only intended to provide wider context. Although an indicative design envelope has been provided in table 3.1, the EIA Report must include a full and detailed description of all options considered within the design envelope. Further information on the design envelope approach is set out in sections 2.4.17 to 2.4.20 below.
- 2.4.2 The Scottish Ministers would like to highlight and mirror the concerns raised by NatureScot in relation to the broad design envelope and lack of detail regarding the construction and operational phases, and the assessment methods, including how data will be analysed and the determination of significance. This has made it difficult to provide specific advice to assist in refining the scope of the EIA Report. The advice provided in this Scoping Opinion is proportionate to the level of detail provided in the Scoping Report.
- 2.4.3 Section 3.3.1.4 of the Scoping Report states that the final WTG model will be selected post-consent and that an EIA will be undertaken on a range of WTG parameters ensuring the worst-case is assessed for each receptor. The Scottish Ministers advise that the EIA Report must include a full and detailed description of all WTG parameters considered within the design envelope.
- 2.4.4 Section 3.3.2 of the Scoping Report states that Proposed Development will include a maximum of six OSPs. The Scottish Ministers note that the OSP parameters are detailed in the design envelope in table 3.1 and advise that the EIA Report must include a full and detailed description of all OSP options being considered including the design, size and foundations.
- 2.4.5 Section 3.3.4 of the Scoping Report is on mooring systems however little information has been provided. Table 3.2 in the Scoping Report sets describes the different foundation types for both fixed and floating WTGs. The EIA Report must provide details on the mooring and foundation design options being

considered within the design envelope. In section 3.3.5 of the Scoping Report the Developer has acknowledged that the EIA Report will consider the type and maximum volume of scour protection required. For the avoidance of doubt the use of scour protection must be assessed in the EIA Report including details on materials, quantities and location.

- 2.4.6 Section 3.3.6 of the Scoping Report states that inter-array, interconnector and export cables will be buried below the seabed to a target depth of 1m but if burial is not possible then further external cable protection may be required. Section 3.3.6.3 of the Scoping Report states that that the type of cable protection will be dependent on factors such as seabed and sediment conditions and the physical processes present but may include concrete mattresses, rock placement, cast iron shells or grout bags. Section 3.3.6.4 explains that where floating foundations are used, dynamic inter-array cables with floating components may be required to allow cables to move with the foundations. It is therefore anticipated that floating inter-array cables will be likely surface laid with deadweight gravity anchors to stabilise the cable on the seabed. If there is any potential for cable protection to be used to protect the inter-array, interconnector or export cables, this must be assessed in the EIA Report including details on materials, quantities and location. In addition, any seabed levelling or removal of substances or objects from on or under the seabed, required for installation of inter-array, interconnector or export cables will require consideration in the EIA Report and may require a marine licence.
- 2.4.7 Section 3.1.2.2 of the Scoping Report states that potential landfall locations have been assessed along a stretch of coastline between Sandend Bay and Old Haven and through this process a landfall area of search has been identified for inclusion within the Scoping Report. Section 3.4 of the Scoping Report states that depending on the location of the landfall point, burial of offshore export cables within the intertidal area will either be via an open cut trenching method, via a trenchless technique such as Horizontal Directional Drill, rockpinned or a combination of each method. The EIA Report must describe and assess the options considered for cable installation at each landfall location and must also explain the reasons for the selected installation options. 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 cable landfall.
- 2.4.8 Section 3.5 of the Scoping Report provides an overview of the proposed development phases. There is brief mention of pre-construction surveys and site investigations including geophysical surveys and unexploded ordnance (“UXO”) surveys. The Scottish Ministers advise that the EIA Report must describe and assess the environmental effects, including in-combination

effects, of the range of surveys which may be required such as geophysical and geotechnical survey activities and UXO clearance. The EIA Report must also include consideration of the options which will be assessed in relation to UXO clearance, the differences amongst them and an assessment of the environmental effects of these options. In this regard, the Scottish Ministers advise that the EIA Report must include a worst-case scenario of high order detonation in terms of impact and mitigation, unless there is robust supporting evidence that can be presented to show consistent performance of the preferred low order or deflagration method.

- 2.4.9 Section 3.5.4 of the Scoping Report states that EIA Report will provide an overview of the estimated decommissioning events and assessment of the anticipated significant effects of this phase on the relevant receptors. Any uncertainty on the impacts upon receptors from activities during decommissioning should be clearly explained, along with the implications for the assessment of significant effects.
- 2.4.10 The Scottish Ministers note that the developer has committed to separate onshore and offshore scoping opinions. The definitions table in the offshore scoping report defines the Proposed Development as “all offshore aspects comprising Array Area, inter-array and interconnector cables, OSP, Offshore Export Cable Corridor (“ECC”) and landfall (up to MHWS)” while the onshore scoping report is defined as “all onshore aspects comprising landfall, landward from Mean Low Water Springs (MLWS), onshore export cable circuits, onshore substation and associate ancillary works such as compound and laydown areas”. The Scottish Ministers highlight the potential for confusion about which scoping opinion the structures within the intertidal area would come under but support the distinctions as expressed in the developer’s definitions.
- 2.4.11 The Scottish Ministers note that the offshore cable corridor, as detailed in several figures throughout the scoping report, intersects with priority marine features including kelp beds, ocean quahogs and burrowed mud. The EIA Report must include consideration of how all priority marine features within the project area will be protected.
- 2.4.12 The Scottish Ministers were content to consult on the scoping opinion without coordinates included. However, the coordinates must be included in the EIA Report detailing the outline of the offshore turbine array and the export cable corridor.
- 2.4.13 Table 4.3 discusses each receptor that is to be scoped out of the EIA Report and provides justification for why the developer believes this is appropriate. This approach meets the requirements of a scoping report, but the Scottish

Ministers note that the receptors scoped out of the EIA Report in Table 4.3 are not subsequently discussed further in their own chapters. The Scottish Ministers have deemed this approach sufficient for the scoping report to go to consultation but if further detail on the receptors to be scoped out of the EIA Report is requested by consulted stakeholders, then the developer must provide this in the EIA Report.

- 2.4.14 The Scottish Ministers highlight that the HRA report should take into account the representations provided by consultees and submitted alongside the EIA Report.
- 2.4.15 The Sectoral Marine Plan for Offshore Wind (“the Plan”) identifies NE4, where the Development is proposed, as being subject to ‘higher levels of ornithological constraint’ and ‘require that sufficient scientific evidence, which reduces the level of risk to an acceptable level, is made available’. The Plan also notes that ‘this may, therefore, delay the progression of licence and consent determinations.....until such time that further evidence, research and knowledge around mitigation is available to support decision-making in this region. Identifying scientific evidence and reducing the level of risk to an acceptable level will be a crucial part of the assessment process’. Development in this location is likely to also require the consideration / submission of a derogation package under the Habitats Regulations with identification of suitable compensation measures as well as evidence of meeting all the required tests.
- 2.4.16 The Plan assessed a potential maximum realistic development for the NE4 site of up to 1 GW of generating capacity, the Scottish Ministers note that the Scoping Report states that the Developer is targeting a capacity of 2 GW for the Proposed Development. The Scottish Ministers are undertaking a re-assessment of the Plan, this may identify further impacts and mitigation given the increased capacity proposed at the NE4 site in addition to the wider potential for increased cumulative impacts given the scale of lease option agreements awarded through the ScotWind leasing round. The outcome of this re-assessment and updated Plan will be relevant to decision making.

### *Design Envelope*

- 2.4.17 The Scottish Ministers note the Developer’s intention to apply a ‘Design Envelope’ approach. Where the details of the Proposed Development cannot be defined precisely, the Developer will apply a worst-case scenario, as set out in section 3.1.3 and table 3.1 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”.

- 2.4.18 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 applications for the marine licences and the accompanying EIA Report.
- 2.4.19 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 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.
- 2.4.20 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*

- 2.4.21 The EIA Regulations require that the EIA Report include ‘a description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the Developer, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects’. The Scottish Ministers acknowledge section 3.1.2 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 with regards to site selection.
- 2.4.22 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. The Scottish Ministers expect this to comprise a discrete section in the EIA Report that provides details of the reasonable alternatives studied across all aspects of the Proposed Development and the reasoning for the selection of the chosen option(s), including a comparison of the environmental effects.

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

#### **3.1 Introduction**

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

#### **3.2 EIA Scope**

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

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

- 3.3.1 The Developer has provided a mitigation commitment register as an appendix to the Scoping Report, summarising the mitigation commitments for each receptor. Any embedded mitigation relied upon for the purposes of the assessment should be clearly and accurately explained in detail within the EIA Report. The likely efficacy of the mitigation proposed should be explained with reference to residual effects. The EIA Report must identify and describe any proposed monitoring of significant adverse effects and how the results of such monitoring would be utilised to inform any necessary remedial actions.
- 3.3.2 The EIA Report should clearly demonstrate how the Developer has had regard to the mitigation hierarchy, including giving consideration to the avoidance of key receptors. The Scottish Ministers advise that where the mitigation is envisaged to form part of a management or mitigation plan, the EIA Report must set out these plans or the reliance on these in sufficient detail so the significance of the residual effect can be assessed and evaluated. This should also include identification of any monitoring and remedial actions (if relevant) in the event that predicted residual effects differ to actual monitored outcomes. Commitment to develop plans without sufficient detail is not considered to be suitable mitigation in itself.
- 3.3.3 The EIA Report must include a table of mitigation which corresponds with the mitigation identified and discussed within the various chapters of the EIA Report and accounts for the representations and advice attached in Appendix I.
- 3.3.4 Where potential 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.

### **3.5 Climate and Greenhouse Gases**

- 3.5.1 The Scoping Report proposes that the impact of climate change effects will be considered as a standalone climate receptor topic which is a welcomed approach. The Scottish Ministers are mindful that Greenhouse Gas (“GHG”) emissions from all projects contribute to climate change. In this regard, the Scottish Ministers highlight the IEMA Environmental Impact Assessment Guide “Assessing Greenhouse Gas Emissions And Evaluating Their Significance” (“IEMA GHG Guidance”), which states that “GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit, as a such any GHG emissions or reductions from a project might be considered significant.” The Scottish Ministers have considered this together with the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the requirement of the EIA Regulations to assess significant effects from the Proposed Development on climate. For the avoidance of doubt, the Scottish Ministers therefore advise that the EIA Report

must include a GHG Assessment which should be based on a Life Cycle Assessment (“LCA”) approach and note that the IEMA GHG Guidance provides further insight on this matter. The Scottish Ministers highlight however that this should include the pre-construction, construction, operation and decommissioning phases, including consideration of the supply chain as well as benefits beyond the life cycle of the Proposed Development.

## 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 30 September 2022. Following consultation extensions, the last response was received on 25 November 2022. The following bodies were consulted, those marked in bold provided a response and those marked in italics stated they had no comments or a nil response was assumed:

- *Aberdeen International Airport*
- **Aberdeenshire Council**
- *Banff and Macduff Community Council*
- *Banff, Macduff and Portsoy Harbour Authority*
- *British Wind Energy Association*
- **British Telecoms (“BT”)**
- *Buckie Fishery Office*
- *Buckie Harbour Authority*
- *Civil Aviation Authority*
- *Committee on Climate Change*
- *Crown Estate Scotland*
- *Deveron, Bogie and Islay Rivers Charitable Trust*
- *Deveron District Salmon Fishery Board*
- *Faroese Telecoms*
- *Fisheries Management Scotland*
- *Fordyce, Sandend and Rural Community Council*
- *Fraserburgh Fishery Office*
- *Health and Safety Executive*
- **Highland and Islands Airports Limited (“HIAL”) on behalf of Wick International Airport**
- **Historic Environment Scotland (“HES”)**
- *Joint Nature Conservation Committee*
- *Joint Radio Company*
- *Marine Planning and Policy*
- *Marine Safety Forum*
- **Maritime Coastguard Agency (“MCA”)**
- **Ministry of Defence (“MOD”)**
- **Moray Council**
- *Moray East*
- *Moray Firth Coastal Partnership*
- *Moray Firth Partnership*

- *Moray West*
- **Mountaineering Scotland**
- **National Air Traffic Services (“NATS”)**
- *National Grid*
- *National Trust for Scotland*
- **NatureScot**
- *NE2 Cluaran Ear-Thuath*
- *NE3 Falck Renewables*
- *NE6 Falck Renewables*
- *NE7 MarramWind*
- *NE8 Buchan Offshore Wind*
- *North and East Coast Inshore Fishery Group*
- **Northern Lighthouse Board (“NLB”)**
- *North Link*
- *Ofgem*
- *Offshore Wind Growth Partnership*
- *Oil and Gas UK*
- *Oil and Pipelines Agency*
- *ORE Catapult*
- *Planning (Scotland)*
- *Ports and Harbours*
- *Portsoy and District Community Council*
- *Receiver of Wreck*
- *Renewables UK*
- *Royal National Lifeboat Institute*
- **Royal Society for the Protection of Birds**
- **Royal Yachting Association (“RYA”)**
- **Scottish and Southern Electricity (“SSE”) Networks Transmission**
- *Scottish Canoe Association*
- *Scottish Creel Fishermen’s Federation*
- *Scottish Enterprise*
- **Scottish Environment Protection Agency**
- *Scottish Federation of Sea Anglers*
- **Scottish Fishermen’s Federation (“SFF”)**
- *Scottish Fishermen’s Organisation*
- *Scottish Gas*
- *Scottish Offshore Wind Energy Council and Deep Wind Cluster*
- *Scottish Renewables*
- *Scottish Sub Aqua Club*
- *Scottish Surfing Federation*
- *Scottish Water*

- *Scottish Wildlife Trust*
- **Spey District Salmon Fishery Board (“Spey DSFB”)**
- *Spey Foundation*
- *Sport Scotland*
- *Surfers Against Sewage*
- **The Highland Council**
- *Transport Scotland*
- **UK Chamber of Shipping (“CoS”)**
- *UK Hydrographic Office*
- **University of Aberdeen Lighthouse Field Station**
- *Visit Moray Speyside*
- *Visit Scotland*
- *Whale and Dolphin Conservation*
- *Whitehills and District Community Council*
- *Whitehills Harbour Authority*

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

## **4.2 Responses received**

4.2.1 From the list above a total of 29 responses were received. Advice was also provided by MSS and MAU. 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 any 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 and MSS 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 Marine and Coastal Processes**

5.2.1 The Scottish Ministers are broadly content with the baseline data sources regarding marine and coastal processes used by the Developer in Table 6.1 of the Scoping Report. In line with the NatureScot representation, the Scottish Ministers advise that the baseline conditions for the Proposed Development should be informed by the EIA Reports of existing projects. To be clear, this means conditions prior to construction of any Moray Firth Offshore Wind Farms ("OWFs"). The Scottish Ministers agree with NatureScot and therefore the Developer must adopt this approach in the EIA Report. The Scottish Ministers are otherwise content with the approach to the baseline environment.

5.2.2 In Table 6.2 of the Scoping Report the Developer summarises the potential impacts to marine and coastal processes during the different phases of the Proposed Development. The Scottish Ministers broadly agree with the impacts scoped in to and out of the EIA Report with the exception of the three impact pathways discussed in section 5.2.3 below. The Developer must fully address the representation from NatureScot in the EIA Report.

5.2.3 The Scottish Ministers disagree that 'modifications to the wave and tidal regime, and associated impacts to morphological features' and 'cumulative modifications to the wave and tidal regime and associated potential impacts to the sediment transport regime' are scoped out of the EIA Report. Both impact pathways must be scoped in for further assessment. Any justification for scoping this receptor out, must be included within the EIA Report. This view is supported by the NatureScot representation. In addition, 'potential impacts to seabed morphology' must be scoped in for all aspects in line with the NatureScot representation.

5.2.4 With regards to the approach to assessment, in line with the NatureScot representation, the Scottish Ministers advise that there should be further consultation with NatureScot on methods for numerical modelling and definition of the Zone of Influence in advance of submission of the EIA Report.

- 5.2.5 With regards to mitigation, the Scottish Ministers agree with the NatureScot representation that for the impact pathways scoped in for marine and costal processes, the full range of mitigation techniques and published guidance should be considered and discussed in the EIA Report.
- 5.2.6 With regards to the Cumulative Impact Assessment (“CIA”), the Scottish Ministers draw attention to the NatureScot representation which advises that operational effects of existing projects on the wave, tidal and sediment transport regime should be explicitly included within the CIA.

### **5.3 Marine Water and Sediment Quality**

- 5.3.1 The Scottish Ministers are content with the baseline data sources regarding marine water and sediment quality used by the Developer in Table 7.1 of the Scoping Report. The Scottish Ministers advise in line with the NatureScot representation that a blue carbon assessment should be undertaken to expand on the information and assessment conducted for benthic ecology to focus on the potential impacts of the proposed development on marine sediments. The Developer must fully address the representation from NatureScot in the EIA Report. The Scottish Ministers are otherwise content with the approach to the baseline environment.
- 5.3.2 In Table 7.7 of the Scoping Report the Developer summarises the potential impacts to marine water and sediment quality during the different phases of the Proposed Development. The Scottish Ministers agree with the impacts scoped in to and out of the EIA Report and provide no further comments.

### **5.4 Benthic Subtidal and Intertidal Ecology**

- 5.4.1 The Scottish Ministers are content with the proposed study area. Additionally, the Scottish Ministers are broadly content with the baseline data sources identified in Table 8.1 of the Scoping Report and are content with the approach to the baseline environment. In addition, and in line with the NatureScot representation, the Scottish Ministers advise that consideration should be given to the use of innovative environmental DNA sampling to complement the traditional methods planned for site-specific survey data collection.
- 5.4.2 In Table 8.3 of the Scoping Report the Developer summarises the potential impacts to benthic subtidal and intertidal ecology during the different phases of the Proposed Development. The Scottish Ministers broadly agree with the impacts scoped into the EIA Report but disagree with some of the impacts scoped out. The Scottish Ministers advises that increased risk of invasive non-native species, changes in physical processes, Electromagnetic Field (“EMF”)

effects and thermal load should be scoped into the EIA Report and the NatureScot and the Highland Council representation must be fully addressed by the Developer in this regard.

- 5.4.3 The Scottish Ministers highlight the Aberdeenshire Council representation which advises that any impacts of the cable landfall on SSSIs in the area of search from Sandend to Macduff should be considered in the EIA Report. The Developer must fully address the NatureScot and Aberdeenshire Council representations in the EIA Report.
- 5.4.4 With regards to the HRA Screening Report, the Scottish Ministers agree with the conclusions specific to benthic subtidal and intertidal ecology which is supported by the NatureScot representation.

## **5.5 Fish and Shellfish Ecology**

- 5.5.1 The Developer sets out the baseline data sources used for fish and shellfish ecology in Table 9.1 of the Scoping Report. The Scottish Ministers are broadly content with the proposed baseline data sources but advise that the additional data sets identified by NatureScot must be used in the assessment in the EIA Report and the NatureScot representation must be implemented in full in the EIA Report. With regards to the study area, the Scottish Ministers are broadly content but advise that the NatureScot and Spey DSFB representations regarding noise modelling for sandeel, herring and Atlantic salmon are implemented in full in the EIA Report.
- 5.5.2 In Table 9.5 of the Scoping Report the Developer summarises the potential impacts to fish and shellfish ecology during the different phases of the Proposed Development. The Scottish Ministers advise that underwater noise should be scoped into the EIA Report for the operation and maintenance phases of the Proposed Development in line with the NatureScot representation, for both fixed and floating foundations. In addition, UXO clearance and depending on the foundation type, disturbance cause by underwater noise during the construction phase, should be scoped into the EIA Report.
- 5.5.3 The Scottish Ministers disagree with the Developers proposal to scope out (“EMF”) effects which is a view supported by NatureScot and the Highland Council. Impacts from EMF from subsea electromagnetic cabling should be scoped into the EIA Report for the operational phase of the Proposed Development and should be considered for all relevant fish species, including elasmobranch species, nephrops, diadromous fish, including migratory fish.

- 5.5.4 The Scottish Ministers also disagree with the Developers proposal to scope out increased risk of introduction and / or spread of invasive non-native species (“INNS”). In line with the NatureScot and the Highland Council representations this must be scoped into the EIA Report for all phases of the Proposed Development due to an increase in vessel traffic and opportunities for hard structures on which to colonise. In addition to the impact pathways identified in Table 9.5 of the Scoping Report, the Scottish Ministers agree with the NatureScot representation and advise that that due to the novel nature of floating offshore wind foundations and the FRP fixed foundations, colonisation of hard structures should be scoped into the EIA Report for the operation and maintenance phase of the Proposed Development.
- 5.5.5 In regard to changes in prey species availability the Scottish Ministers advise that more consideration of changes in prey species and their habitats is required in the EIA Report. This view is in line with the NatureScot representation, which must be fully addressed in this regard.
- 5.5.6 The Scottish Ministers highlight the Spey DSFB representation which identifies that the proposed cable route runs through an area of kelp forest that may be an important overwintering habitat to sea trout. In addition, the Spey DSFB suggests that WTGs may have potential to create additional hunting grounds for piscivorous birds, seals and large predatory fish may impose additional pressure on migrating salmonids in the Moray Firth. It also highlights that the construction of the Proposed Development will encompass the probable migration route of Atlantic salmon smolts towards their summer feeding grounds as well as the return path of spawning adults. The Developer should show consideration of these potential impacts to sea trout and migrating salmonids in the EIA Report.
- 5.5.7 The Scottish Ministers agree with the remaining impacts scoped in to and out of the EIA Report. The Developer must fully address the representation from the Spey DSFB and NatureScot in the EIA Report.
- 5.5.8 With regards to the approach to assessment, the Scottish Ministers advise that benthic ecology surveys, such as habitat maps and particle size analysis, should be used to understand the suitability of the seabed habitat for sandeel and herring spawning. This view is in line with the NatureScot representation. Additionally, and in line with the NatureScot advice, the Scottish Ministers advise that the assessment should quantify where possible the likely impacts to key Priority Marine Features (“PMFs”) and consider whether this could lead to a significant impact on the national status of the PMFs being considered.

- 5.5.9 With regards to mitigation, the Scottish Ministers agree with the NatureScot representation that the full range of mitigation techniques and published guidance should be considered and discussed in the EIA Report.
- 5.5.10 With regards to the cumulative impacts, the Scottish Ministers advise in line with the NatureScot representation that the Developer should consider the cumulative effects of key impacts such as habitat loss or change, especially in relation to diadromous fish as well as key fish and shellfish species that contribute to ecological importance as a prey resource.
- 5.5.11 With regards to the HRA Screening Report, the Scottish Ministers advise that all SACs designated for Atlantic salmon in Scotland are screened in at this stage for further assessment, in line with the NatureScot representation. The Scottish Ministers also agree with the NatureScot representation that all SACs with Fresh Water Pearl Mussels (“FWPM”) as a qualifying feature should also be screened in for further assessment as Atlantic salmon are a host species for FWPM during a critical parasitic phase of the FWPM life cycle and therefore indirect impacts require consideration to ensure populations are not adversely affected. The Developer should discuss with NatureScot how this will be assessed in the next stage of the HRA process.
- 5.5.12 The Developer should also note that further consideration is required for in-combination impacts in relation to the HRA Screening given the 100km approach is not appropriate for migratory fish. The Developer must fully address the NatureScot representation with regards to HRA.
- 5.5.13 The Scottish Ministers agree with the Developer to screen in the River Spey SAC for sea and river lamprey as it is possible migration routes may overlap the Proposed Development which is in line with the NatureScot representation.

## **5.6 Offshore Ornithology**

- 5.6.1 The Scottish Ministers are broadly content with the data sources listed, however, in line with the NatureScot representation advise that caution should be applied when considering data exceeding 5 years. This data should be treated as context only and should not be used to determine baseline characterisation.
- 5.6.2 In regard to baseline characterisation, the Scoping Report does not include any data from the initial 12 months of Digital Aerial Surveys (“DAS”). Additionally, the Scoping Report does not include a description of the proposed analysis of the DAS or how additional data from other Moray Firth Offshore Windfarms will be incorporated. The Scottish Ministers therefore

cannot provide any comment on baseline characterisation and further discussion should be had with NatureScot in this regard. However, in line with the RSPB representation, the Scottish Ministers request that any deceased birds are recorded to help better understand the impacts of the highly pathogenic avian influenza (“HPAI”) outbreak.

- 5.6.3 Within Table 10.4 of the Scoping Report the Developer details the potential impact pathways to be scoped in or out for assessment within the EIA Report. The Scottish Ministers broadly agree with the Developer’s proposals, however in line with the NatureScot representation, impacts from wet storage must be scoped in for further assessment in the EIA Report. The NatureScot representation must be addressed in full in this regard.
- 5.6.4 The Scottish Ministers agree with the NatureScot and RSPB representations that barrier effects must be scoped into the EIA Report. However, the Scottish Ministers are content for the Developer to consider these effects alongside the displacement pathways that are already being scoped into the EIA Report. Additionally, the displacement analysis should also consider kittiwake.
- 5.6.5 The Scottish Ministers advise that operational disturbance and displacement within the ECC should not be scoped out of the EIA Report. This impact pathway should be scoped in and the NatureScot representation in this regard fully addressed.
- 5.6.6 The Scottish Ministers advise that impacts of lighting on ornithological receptors must be scoped into the EIA Report for both fixed WTGs and OSP and floating WTGs for all phases of the Proposed Development. The NatureScot representation in this regard must be addressed in full by the Developer.
- 5.6.7 In regard to key species, in line with the NatureScot and RSPB representations, the Scottish Ministers advise that in the absence of site-specific data having been included in the Scoping Report, no species can be scoped out of further consideration. The NatureScot and RSPB representations regarding ‘important ornithological features’ must be addressed in full by the Developer in the EIA Report.
- 5.6.8 Finally, the Scottish Ministers are content for indirect impacts of accidental pollution on bird species to be scoped out of the ornithological receptor chapter within the EIA Report provided the effects of accidental pollution are adequately addressed in another relevant chapter.
- 5.6.9 With regards to the proposed assessment methods, the Scottish Ministers advise that the Developer must refer to breeding and non-breeding season

definitions as NatureScot refer to them in its guidance. This will require Table 10.3 to be updated in the EIA Report with any reference to “bio-seasons” amended.

- 5.6.10 In addition, in line with the NatureScot representation, The Scottish Ministers advise that with regard to displacement and barrier effects, the SeabORD tool should be used for Atlantic puffin, common guillemot, razorbill and black-legged kittiwake during the breeding seasons. The Scottish Ministers also highlight the advice regarding the use of SeabORD within NatureScot’s representation. All other species should be assessed using the matrix approach. If it is possible to undertake a bespoke individual based model, agreement from NatureScot is required. For the species where SeabORD is used during the breeding season, the matrix approach should be used during the non-breeding season, with the exception of common guillemot where the population and impacts should be based on an assessment derived from the breeding season foraging range.
- 5.6.11 In regard to displacement the Scottish Ministers advise that the displacement and mortality ranges contained within with the NatureScot representation must be used for the assessment in the EIA Report. The Scottish Ministers advise that the NatureScot representation in regard to barrier and displacement is addressed in full in the EIA Report. The Developer must also make it clear which approach has been applied to which species, for both breeding and non-breeding seasons.
- 5.6.12 In regard to collision risk, in line with the NatureScot and RSPB representations, the Scottish Ministers advise that in addition to deterministic Collision Risk Modelling, stochastic models should also be presented. Flight height distribution from Johnson et al (2014) with corrigendum should be used, in line with the RSPB and NatureScot representations. In regard to flight speed, the Developer should engage with NatureScot to discuss appropriate, evidence-based values to be used.
- 5.6.13 In regard to avoidance rates the Scottish Ministers advise that the Statutory Nature Conservation Body guidance (2014) on avoidance rates should be used with a standard deviation of +/- 2. For species where there are no agreed avoidance rates, The Scottish Ministers recommend use of 98% as default and where there are terrestrial estimates based on the species in question, those rates should be used. Outputs from each model should be supplied in full as appendices with input parameters stored. This advice is in line with the NatureScot representation and for the avoidance of doubt, the NatureScot representation in regard to collision risk, avoidance rates, presentation of outputs and strategic collision risk must be addressed in full in the EIA Report by the developer.

- 5.6.14 Potential collision risk to migratory species should be assessed qualitatively with reference to the survey results and the Marine Scotland commissioned strategic level report. Marine Scotland are also in the process of commissioning an updated strategic review of migratory routes via ScotMER. This update should be used if available within assessment timescales.
- 5.6.15 With regards to apportioning, in line with the NatureScot representation, the Scottish Ministers advise that in order to consider any population consequences arising from displacement and estimated collisions, the overall impacts will need to be apportioned by season, between SPAs and across age classes. The NatureScot representation regarding apportioning must be addressed in full by the Developer in the EIA Report.
- 5.6.16 With regards to population consequences the Scottish Ministers agree with the intention to use the Natural England Population Viability Analysis (“PVA”) tool. The NatureScot and RSPB representations with regards to PVA must be fully considered by the Developer in the EIA Report.
- 5.6.17 The Scottish Ministers are content with the use the Cumulative Effects Framework. The Developer should agree the proposed list for the cumulative assessment with NatureScot and Marine Scotland. The Developer must implement the NatureScot representation regarding the cumulative assessment for breeding and non-breeding seasons within the EIA Report.
- 5.6.18 The Scottish Ministers advise that where significant impact pathways have been identified, the full range of mitigation techniques and published guidance is considered and discussed in the EIA Report. In line with the NatureScot representation, the Scottish Ministers advise that the embedded mitigation looks appropriate, but a wet storage plan is included within the embedded mitigation and that operational and maintenance activities are included within the vessel management plan.
- 5.6.19 The Scoping Report does not make reference to the recent outbreak of Highly Pathogenic Avian Influenza (“HPAI”). In line with the NatureScot representation, a qualitative assessment of the Proposed Development in light of HPAI should be presented in the EIA Report.
- 5.6.20 The Scottish Ministers note the NatureScot representation that derogations will likely be required under the Habitats Regulations. The Developer must provide evidence in the EIA Report of how all associated tests are met and present a suitable compensation package.

- 5.6.21 With regards to the HRA Screening Report, in addition to the impact pathways identified, impacts of wet storage have not been sufficiently addressed. The Scottish Ministers advise further assessment of potential impacts is required in the HRA, in line with the NatureScot representation.
- 5.6.22 The Scottish Ministers broadly agree with the use Woodward *et al* (2019) in regard to foraging ranges, with the exception of gannets, guillemots and razorbills. The NatureScot advise contained in Annex 1 of its representation must be fully addressed by the Developer in the EIA Report. Additionally, the Scottish Ministers advise that shag must be scoped in for further assessment for the Moray Firth SPA. Impacts on Sandwich tern at Ythan Estuary SPA must also be scoped in for assessment during the construction phase within the export cable corridor.
- 5.6.23 In line with the NatureScot representation, The Scottish Ministers advise that the mean foraging ranges for Leach's petrel should be in line with Woodward *et al* (2019). Therefore, in addition to those identified North Rona and Sula Sgeir SPA, Foula SPA, Flannan Isles SPA, Sule Skerry and Sule Stack SPA, St Kilda SPA and Ramna stacks and Gruney SPA must be scoped in the HRA for further assessment.
- 5.6.24 Additionally in line with the NatureScot representation, The Scottish Ministers disagree that SPAs should be scoped out on the basis that they are located on the west coast of the UK. The screening process for HRA requires that all species with theoretical connectivity are screened in for further consideration – taking into account at sea connectivity distances. Therefore, the following species and sites must be considered to have Likely Significant Effect (“LSE”); Handa SPA for Great skua, Fulmar and Kittiwake, Guillemot and Razorbill; Priest Island (Summer Isles) SPA for Storm Petrel; Shiant Isles SPA for Kittiwake, Fulmar and Puffin; Rum SPA for Manx shearwater; Canna and Sanday SPA for Kittiwake and Puffin; Flannan Isles SPA for Kittiwake, Fulmar and Leach's Petrel; Treshnish Isles SPA for Storm petrel; Mingulay and Berneray SPA for Fulmar and St Kilda SPA for Gannet, Fulmar, Manx shearwater, Great skua, and Leach's petrel. The Developer should refer to Annex 1 of the NatureScot representation for guidance on establishing connectivity.
- 5.6.25 In regard to connectivity and identification of key sites for migratory birds (non-seabirds), the Scottish Ministers highlight the NatureScot representation and advise that this is considered by the Developer in the HRA.
- 5.6.26 In regards to transboundary impacts, in addition to those identified, in line with the NatureScot representation, the Scottish Ministers advise that the following SPAs should be considered to have LSE and be screened in for assessment

in the HRA: Rathlin Island SPA for Fulmar; Copelin Islands SPA for Manx shearwater; Glannau Aberdaron ac Ynys Enlli/ Aberdaron Coast SPA and Bardsey Island SPA for Manx shearwater; Skomer, Skokholm and the Seas off Pembrokeshire / Sgomer, Sgogwm a Moroedd Penfro SPA for Manx shearwater; Isles of Scilly SPA for Fulmar and Manx shearwater.

- 5.6.27 The Developer should also note the RSPB HRA representation in regard to the exclusion of Sooty shearwater, Manx shearwater, European storm petrel and Leach's storm petrel. This must be addressed in full by the Developer in the HRA.
- 5.6.28 Finally, the Developer should consider the RSPB HRA representation, in regard to the request for matrix tables to be provided showing evidence supporting conclusions for HRA screening assessments.

## **5.7 Marine Mammals and Other Megafauna**

- 5.7.1 The Scottish Ministers are content with the study area listed in section 11.2 of the Scoping Report and are broadly content with the baseline data sources identified in 11.3 of the Scoping Report. The Developer should, however, make amendments to references identified and ensure that the citations included in the representation from the University of Aberdeen Lighthouse Field Station are included in the EIA Report.
- 5.7.2 The Scottish Ministers confirm, in line with the NatureScot representation that passive acoustic monitoring, in addition to DAS is not required for baseline characterisation, given the extensive acoustic survey work already undertaken in the region.
- 5.7.3 In line with the NatureScot representation, the Scottish Ministers advise using the UK portion of the management Unit ("MU") as the reference population, and where appropriate, the assessment should also look at smaller units to provide a regional content e.g. SCANS survey blocks.
- 5.7.4 Table 11.3 in the Scoping Report identifies the impact pathways to be scoped in or out of the EIA Report. The Scottish Ministers advise, potential impacts from electromagnetic fields ("EMF") on cetaceans and basking sharks, and operational noise must also be scoped in and the NatureScot representation in this regard addressed in full in the EIA Report. Additionally, indirect entanglement must also be considered for the fully restrained platform foundation design. Increased vessel disturbance in coastal areas should also be assessed in the EIA Report, in line with the University of Aberdeen Lighthouse Field Station representation.

- 5.7.5 The Scottish Ministers welcome the Developer's recognition of the minke whale qualifying interest for Southern Trench NCMPA within Table 11.2. Consideration of the Proposed Development's effects on the minke whales of Southern Trench NCMPA should cover all impact pathways but pay particular attention to potential effects arising from the export cable corridor route.
- 5.7.6 The Scottish Ministers advise that, where impact pathways have been identified, a full range of mitigation techniques and published guidance should be considered in the EIA Report. The Developer must also develop and adhere to a Marine Mammal Mitigation Protocol as part of the EIA Report. This advice is in line with the NatureScot representation.
- 5.7.7 Additionally, the Scottish Ministers also highlight the NatureScot representation that the approach to cumulative impact assessments for marine mammal interests, must be discussed with NatureScot, prior to the submission of the EIA Report.
- 5.7.8 In regard to the HRA Screening, in line with the NatureScot representation, the Scottish Ministers are content with the protected sites scoped in and out for bottlenose dolphins and harbour porpoise. The Scottish Ministers do not agree with the sites scoped in for grey seals and harbour seals. The NatureScot representation in regard to grey seals and harbour seals must be implemented in full by the Developer in the HRA.

## **5.8 Commercial Fisheries**

- 5.8.1 The Developer identifies baseline data sources in table 12.1 of the Scoping Report. In addition to those identified the Scottish Ministers advise that the 2021 fisheries data is now available and should be utilised, in line with the MSS advice.
- 5.8.2 In table 12.1 the Developer summarises the potential impacts to commercial fisheries which it proposes to scope in and out of the EIA Report. The Scottish Ministers agree with all the impacts scoped in and out of the EIA Report in line with the MSS advice.
- 5.8.3 The Scottish Ministers highlight the SFF representation in regard to displacement on whitefish, nephrops, scallops and squid fishers and advise that the Developer should consider this in the EIA Report. Additionally, assessments for king scallop should take place over a minimum of 7 years, though ideally 10 if the data is available, to present the fullest picture of the fishery possible.

## 5.9 Shipping and Navigation

- 5.9.1 The Scottish Ministers are content with the study area identified in section 13.2 of the Scoping Report. With regards to baseline data listed in table 13.1 of the Scoping Report, the Scottish Ministers direct the Developer to the representation to the UKCoS. The Scottish Ministers advise that the Marine Accident Investigation Branch spatial accident data included within the EIA Report must be increased from 10 years to 20 years to fully assess trends and historic incidents.
- 5.9.2 In line with the representation from the MCA, the Scottish Ministers are content 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 on cruise and passenger traffic during 2020.
- 5.9.3 Table 13.2 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 and out of the EIA Report. The Scottish Ministers broadly agreed with the impacts scoped in and out however, advise that cumulative and transboundary effects must also be scoped into the EIA Report. This is in line with the UKCoS, MCA and RYA representations.
- 5.9.4 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.
- 5.9.5 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 the MCA regarding the maximum deviation from the cable route.

- 5.9.6 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 in the EIA Report and that a SAR checklist must be completed by the Developer in consultation with the MCA. In relation to the proposed embedded mitigation measures, the Scottish Ministers highlight the representations from the MCA, CoS and NLB which must be fully addressed by the Developer
- 5.9.7 For completeness, the Developer should note, if floating foundations are selected the MCA confirmed that compliance with regulatory expectations for floating infrastructure 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.
- 5.9.8 The Scottish Ministers also agree with The Highland Council that, should the Developer plan to use any ports within the Highland Council area for construction or supply chain components, this must be assessed within the EIA Report.

## **5.10 Marine Archaeology and Cultural Heritage**

- 5.10.1 The Scottish Ministers are content with the proposed study area as described in paragraph 14.2.1.1 of the Scoping Report. The Developer sets out the baseline data sources regarding marine archaeology and cultural heritage in Table 14.1 of the Scoping Report. The Scottish Ministers advise that the list of baseline data sources set out in paragraph 14.8.1.1 of the Scoping Report should be broadened for the marine component of the Proposed Development to also include nautical charts and site-specific survey work in line with the HES representation. The HES representation also reiterates the importance that site surveys should be designed so that the presence or absence of submerged or semi-submerged paleo landscapes can be identified.
- 5.10.2 The Scoping Report identifies the Aberdeenshire and Moray Historic Environment Records (“HER”) as unavailable. In line with the Aberdeenshire Council representation, the Scottish Ministers advise that the HER is available, and the Developer should include the HER data in the EIA Report. If the data is unavailable, the Developer should contact Aberdeenshire Council prior to submission of the EIA Report to discuss and agree its approach. The Scottish Ministers are otherwise content with the baseline data sources and the approach to the baseline environment.

- 5.10.3 In Table 14.3 of the Scoping Report the Developer summarises the potential impacts to marine archaeology and cultural heritage during the different phases of the Proposed Development. The Scottish Ministers agree with the impacts scoped in to and out of the EIA Report. However, the Scottish Ministers advise, in line with the HES representation that onshore heritage assets as an impact pathway, should in scoped in for further assessment in the EIA Report. Assessment of the impacts of the Proposed Development on onshore heritage assets including A-listed buildings, inventory gardens and designed landscapes and scheduled monuments should be included in the EIA Report. If these impacts are excluded after assessment, a written explanation of the process and results of the assessment and reasons for their exclusion should be provided in the EIA Report.
- 5.10.4 In addition, in line with the Highland Council representation, listed buildings and conservation areas on the coastal edge, from at least Noss Point to Dunbeath Castle should be considered and tested for impacts arising upon their seaward setting. The Scottish Ministers further highlight the Highland Council representation which advises that the Developer should identify all designated sites which may be affected by the Proposed Development. Any assessment should contain a full appreciation of the setting of the historic environment assets and the likely impact on their settings. Where significant impacts are likely, the Developer should provide appropriate visualisations in the EIA Report. The Developer must fully address the representations from HES, Aberdeenshire Council and the Highland Council in the EIA Report.
- 5.10.5 With regards to the approach to assessment, the Scottish Ministers highlight the Aberdeenshire Council representation which advises that during any UXO clearance activities there should be provisions for archaeological assessment and recording should a target be identified as not being a UXO but still requires removal.
- 5.10.6 In regard to mitigation, in addition to that set out in paragraph 14.4.1.2 and in line with the HES representation, the Scottish Ministers advise that further mitigation is necessary. Specifically, that the EIA Report include: avoidance of known/identified heritage features using Archaeological Exclusion Zones and a pre-defined buffer; archaeological monitoring of works in the intertidal zone at potentially sensitive landfalls, covered by a Written Scheme of Investigation and; implementation of a Protocol for Archaeological Discoveries for works below the low water mark where a watching brief would not be feasible.

## **5.11 Military and Civil Aviation**

- 5.11.1 The Scottish Ministers are broadly content with the study area and that the baseline data gathered for the assessment is appropriate. However, The Scottish Ministers highlight the MOD representation which identifies that there are two primary air traffic control surveillance radars active at RAF Lossiemouth and the impacts of the Proposed Development on these radars must be considered and appropriate mitigation proposed, in the EIA Report. Impacts on these arising from the Proposed Development must be considered within the EIA Report. The precision approach radar which is present at RAF Lossiemouth must also be included in the assessment.
- 5.11.2 The Scottish Ministers highlight the representation by NATS which predicts that the Proposed Development is likely to generate an unacceptable level of clutter to its Radar infrastructure. The Scottish Ministers advise that the Developer validates this position in relation to the generation of radar clutter and explore how this could be mitigated in the EIA Report. NATS has also advised that the Proposed Development will likely have unacceptable impacts to Prestwick Air Traffic Control (“ATC”), Aberdeen Offshore ATC and Military ATC. The Scottish Ministers recommend the Developer engage further with NATS on these points and advise that these impacts must be assessed, including mitigation, if necessary, in the EIA Report.
- 5.11.3 The Developer identifies the Proposed Development will be located within Danger Area D809 South in Section 15.2.3.1 of the Scoping Report. In line with the MOD representation, The Developer must ensure that no infrastructure related to the Proposed Development is installed within the boundary identified in the MOD representation. Military training activities are conducted in this Danger Area and EIA Report should consider the effects of vessels, barges, platforms and associated traffic present during the construction of the Proposed Development to ensure it does not interfere with these activities.
- 5.11.4 The Scottish Ministers agree with the Highland Council representation that the Developer must demonstrate consideration of community interests it has identified relating to aviation, radar and telecommunications as part of the EIA Report. Written records of discussions and outcomes of consultations with any relevant authorities, as detailed in the Highland Council representation within Appendix I, must be included within the EIA Report. In the event that no such effects are identified, the rationale must still be included in the EIA Report.
- 5.11.5 The Scottish Ministers note that HIAL have submitted a holding objection, pending the Developer’s completion of an Aviation Impact Feasibility Study (“AIFS”) to consider potential effects of the Proposed Development on Wick airport. The Developer must address the HIAL representation in regard to the AIFS in full in the EIA Report.

## 5.12 Seascape, Landscape and Visual Impact

- 5.12.1 With regards to the proposed study area for the Seascape, Landscape and Visual Impact Assessment (“SLVIA”), the Scottish Ministers advise that it should be a radius of 60km from the boundary of the Proposed Development which is in line with the Highland Council representation. The SLVIA should be completed in full across the entire study area and the Developer should note the Highland Council does not consider it to be acceptable to screen out viewpoints for a full assessment based on distance.
- 5.12.2 In line with the Highland Council representation, the Scottish Ministers advise that two additional viewpoints are required, Dunnet Head and a night-time visualisation from VP6 Lybster. Additionally, the Scottish Ministers advise that viewpoints and wireframes for the SLVIA must be agreed in advance of preparation of any visuals with the Highland Council.
- 5.12.3 In addition, the Scottish Ministers highlight the Moray Council representation which requests that a viewpoint is selected from within Moray, such as from Cullen viaduct or some other coastal viewpoint at the eastern side of Moray. The Developer should also note that Community Councils may request additional viewpoints and therefore the Scottish Ministers advise the Developer to discuss this with the local community and Community Councils prior to submission of the EIA Report.
- 5.12.4 The detailed location of viewpoints should be informed by site surveys, mapping and predicted Zones of Theoretical Visibility (“ZTVs”) and the purpose of the selected and agreed viewpoints must be clearly identified and stated in the EIA Report. The Scottish Ministers also highlight the detailed advice for the photographer within the Highland Council representation.
- 5.12.5 The Developer sets out the baseline data sources used regarding seascape, landscape and visual in Table 16.1 of the Scoping Report. The Scottish Ministers advise that the Developer should consider the night-time component of the character and visual amenity, in line with the NatureScot representation. The Scottish Ministers are otherwise content with the baseline data sources and the approach to the baseline environment. In line with the NatureScot representation, the landscape baseline assessment should include the Proposed Development in addition to existing and/or under construction OWFs (terrestrial and marine).
- 5.12.6 In Table 16.5 of the Scoping Report the Developer summarises the potential impacts to seascape, landscape and visual during the different phases of the Proposed Development. The Scottish Ministers agree with the impacts scoped

into the EIA Report but disagree with some of the impacts scoped out. The Developer must fully address the NatureScot, the Moray Council and the Highland Council representations in this regard, in the EIA Report.

- 5.12.7 The Scottish Ministers advise in line with the Highland Council representation impacts during the construction and decommissioning phase should be scoped into the EIA Report. In addition, effects beyond 50km should not be scoped out of the EIA Report and instead this should be updated to a 60km radius, and these impacts should be scoped into the EIA Report.
- 5.12.8 The Scottish Ministers disagree with the proposal to scope out the impact of the operation and maintenance of the Proposed Development experienced by offshore visual receptors and this impact should therefore be scoped into the EIA Report. This is in line with the Highland Council representation.
- 5.12.9 With regards to the SLVIA, the Scottish Ministers advise the Developer to utilise the Onshore Wind Energy Supplementary Guidance (“OWESG”) and the Caithness Landscape Sensitivity Appraisal which are available on the Highland Council website and include an assessment of the Proposed Development against the criterion set out in the OWESG in the EIA Report.
- 5.12.10 The Scottish Ministers highlight the Highland Council representation which contains specific requirements for the presentation of visual material for the assessment of seascape, landscape and visual impacts as separate elements. The Developer must ensure that the EIA Report contains images in line with the Highland Council representation and that the minimum requirements for the printed hard copies are also achieved. On the use of monochrome for specific viewpoints, the Developer should note that the Highland Council is able to provide further advice.
- 5.12.11 The Scottish Ministers further advise that the methodology for the SLVIA should be clearly set out in the EIA Report in line with the Highland Council representation. The Developer should ensure that the Highland Council representation is addressed with regards to the requirements for route assessments including impacts on tourist and recreational routes and sequential route assessments.
- 5.12.12 The Scottish Ministers advise that the assessment should include impacts on any landscapes designated at a national and local scale including the impact on Special Landscape Area which should be undertaken using the citations available from the Highland Council website.
- 5.12.13 With regards to the cumulative impacts, the Scottish Ministers draw the Developers attention to the NatureScot and Highland Council representations.

NatureScot considers that the most likely significant effects are to be derived from the cumulative design relationship between the existing and/or under construction OWFs in the Moray Firth and the Proposed Development. The Scottish Ministers agree with NatureScot and encourage that, as part of design iteration, consideration is given to alternative heights and locations within the Array Area to mitigate potential significant effects from poor cumulative composition and higher turbines on sensitive coastal receptors, in particular on the closest east Sutherland coast. The Developer should assess the cumulative seascape, landscape and visual impacts in the EIA Report in line with the NatureScot representation. Additionally, the Developer should review the wind energy map provided by the Highland Council and also note the requirements for images for presentation within the Panoramic Digital Viewer.

- 5.12.14 The Scottish Ministers further highlight the NatureScot representation which identifies that the use of both fixed and floating WTG technologies could potentially avoid or reduce the appearance of illogical gaps or breaks in the layout and that the use of different turbine heights within the Array Area could reduce significant cumulative effects arising from the substantial difference in turbine heights proposed against those of existing OWFs (in particular Beatrice and Moray East). As part of design iteration, the Developer must aim to produce a cohesive composition with the existing Moray OWFs in line with the NatureScot representation.

### **5.13 Socio-economics, Tourism and Recreation**

- 5.13.1 With regards to the study area identified in section 17.2 of the Scoping Report, the Scottish Ministers advise that the local study area may be too large to enable sufficiently granular analysis for certain socio-economic impacts. The Developer should refer to Annex 1 of the MAU advice and consider how to define the impact area in line with this.
- 5.13.2 With regards to the study area for Tourism and Recreation, sea cliff climbing should be considered in Table 17.7. Particular attention should be paid to cable landfall locations. With regards to the Proposed Development's effects on tourism and recreation, the Scottish Ministers highlight the representation of Mountaineering Scotland. The Developer must consider potential effects of the works, particularly landfall points for export cables, on local sea cliff climbing interests.
- 5.13.3 With regards to the baseline environment, in addition to the indicators identified, the Scottish Ministers advise that the Developer must include the additional indicators identified by the MAU in its advice. The Developer should engage with Marine Scotland on the planned stakeholder engagement and

social research methods for primary data collection in line with the MAU advice.

- 5.13.4 The Scottish Ministers are broadly content with the impacts listed in Table 17.9 of the Scoping Report, which the Developer proposes to scope in and out of the EIA Report. However, the Scottish Ministers advise that the MAU advice in relation to scoping of impacts, specifically GVA and Employment Impacts, Commercial Fisheries and Social Impacts, and the Highland Council's representation is addressed in full by the Developer in the EIA Report. For the avoidance of doubt, the Scottish Ministers advise that the Developer should undertake a full Socio-Economic Impact Assessment and in completing this, direct the Developer to the principles outlined in the "Annex 1: General Advice for Socio-Economic Impact Assessment Marine Analytical Unit, December 2022" advice from MAU.
- 5.13.5 The Scottish Ministers recommends the Developer using the wind farm and transmission network development experience to help assess the bases of any likely impacts, setting out these impacts and their consequent mitigations to local, regional and national economies where necessary.

## **5.14 Climate**

- 5.14.1 The Developer sets out the baseline data sources used regarding climate in Table 18.1 of the Scoping Report. The Scottish Ministers agree with the NatureScot representation that a blue carbon assessment should be undertaken in addition to the assessments listed in paragraph 18.1.1.2 of the Scoping Report as outlined above in section 5.3 of this Scoping Opinion. The Scottish Ministers are otherwise content with the baseline data sources and the approach to the baseline environment.
- 5.14.2 In Table 18.5 of the Scoping Report the Developer summarises the potential impacts to climate during the different phases of the Proposed Development. The Scottish Ministers agree with the impacts scoped into the EIA Report but advise that consideration of the carbon cost of the wind farm (including supply chain) and to what extent this is offset through the production of green energy should also be scoped into the EIA Report in line with the NatureScot representation. The Developer must fully address the representation from NatureScot in the EIA Report.

## **5.15 Other Human Activities**

- 5.15.1 The Scottish Ministers are content with the baseline data sources regarding other human activities identified by the Developer in Table 19.1 of the Scoping Report and are content with the approach to the baseline environment. The

Scottish Ministers emphasise the importance of engaging with other marine users, including developers of ScotWind projects, throughout all phases of the Proposed Development.

- 5.15.2 In Table 19.3 of the Scoping Report the Developer summarises the potential impacts to other human activities during the different phases of the Proposed Development. The Scottish Ministers agree with the impacts scoped in to and out of the EIA Report. In addition, the Developer must fully address the representations from BT, SSE and the Highland Council in the EIA Report.
- 5.15.3 The Scottish Ministers direct the Developer to the Highland Council representation which suggests it is possible that aspects of the Proposed Development associated with the supply chain and construction may directly utilise the areas within its boundaries. Therefore, the Scottish Ministers advise in line with the Highland Council representation that where this is confirmed to be the case, the relevant assessments should be updated.
- 5.15.4 As there is no appropriate specific receptor, the Developer should address the Highland Council representation regarding land use in the other human activities chapter of the EIA Report. This should include recognising the existing land uses affected by the Proposed Development with particular regard for the Highland Council's development Plan inclusive of all statutorily adopted supplementary guidance.
- 5.15.5 The Scottish Ministers highlight the SSE representation which requires the Developer to engage with Scottish Hydro-Electric Transmission regarding the Caithness – Moray High Voltage Direct Current link which is situated within the Proposed Development area. Consideration should also be given to the cable landfall selection so as not to unnecessarily exclude future potential cable landfalls within the proposed export cable corridor. The Scottish Ministers also highlight the representation from BT that grid references and structure heights should be provided.

## 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 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 principal 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

Jessica Malcolm

13 January 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*