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

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

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

and

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

Berwick Bank Offshore Wind Farm

9 March 2021

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1. Introduction

1.1 Background

- 1.1.1 On 7 August 2020, the Scottish Ministers received a scoping report (“the Scoping Report”) from Berwick Bank Wind Limited (“the Developer”) as part of its request for a scoping opinion relating to Berwick Bank Offshore Wind Farm (“the Proposed Development”). The Scottish Ministers considered the content of the Scoping Report as sufficient and in accordance regulation 14 of both The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) and The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) and Schedule 4 of The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended), all collectively referred to as “the EIA Regulations”. The Developer has chosen to subsequently submit a Habitats Regulations Appraisal (“HRA”) screening report separate from the Scoping Report and therefore a response to this will be issued under separate cover.
- 1.1.2 This Scoping Opinion is adopted by the Scottish Ministers under the EIA Regulations (“the 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 Environmental Impact Assessment Report submitted with an application for consent under section 36 (“s.36 consent”) of The Electricity Act 1989 (as amended) (“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 For the avoidance of doubt the Scottish Ministers advise that as more than one set of Environmental Impact Assessment (“EIA”) regulations apply the most stringent requirements must be adhered to in terms of, for example, consultation timelines and public notice requirements.

2. The Proposed Development

2.1 Introduction

2.1.1 This section provides a summary of the description of the Proposed Development provided by the Developer in the Scoping Report together with the Scottish Ministers general comments in response. The details of the Proposed Development in the Scoping Report have not been verified by the Scottish Ministers and are assumed to be accurate.

2.2 Description of the Proposed Development

2.2.1 The Proposed Development will comprise of an offshore generating station located outwith 12 nautical miles (“nm”) in the outer Firth of Forth and Firth of Tay, 39.2 kilometres (“km”) east of the East Lothian coastline. The Proposed Development will have a capacity of greater than 50 Mega Watts (“MW”) and therefore requires the Scottish Ministers’ consent to allow its construction and operation. The Proposed Development will also require marine licences granted by the Scottish Ministers under the 2009 Act and the 2010 Act, to permit any and all ‘licensable marine activities’ carried on for the Proposed Development and objects in or over the sea, or on or under the sea bed.

2.2.2 The Proposed Development will include the construction and operation of offshore wind turbine generators and all associated offshore infrastructure. The key components of the Proposed Development include:

- Up to 242 wind turbine generators (each comprising a tower section, nacelle and three rotor blades) all associated support structures and foundations;(Foundation options being considered include: monopiles, suction bucket jacket foundations, piled jacket foundations, gravity base structures and floating foundations).
- Associated support structures and foundations to be chosen from jacket foundation with pin piles, suction bucket jacket foundations, gravity base foundations and/or floating foundation;
- A maximum rotor blade diameter of no greater than 270 metres (“m”);
- A maximum blade tip height of 310m (above Lowest Astronomical Tide (“LAT”));
- Minimum blade tip height of 186m (above LAT);
- Maximum nacelle height of 175m (above LAT);
- Minimum blade clearance to water surface of between 22m and 40m (above LAT);
- Up to ten offshore substation platforms (“OSP”) and associated support structures and foundations; The OSP topsides will be up to 70m in length, 44m width and be approximately 50m in height above LAT with foundations to be chosen from either suction bucket jacket foundations, piled jacket foundations;

- Up to 10 offshore export cables, laying method may include ploughing, jetting, scar ploughing and grapnel. Cable installation method at landfall may include trenchless installation: such as Horizontal Directional Drilling (HDD) or Direct Pipe or open cut trench method;
- Scour protection of up to 2,280,000 cubic metres (“m³”) (consisting of either concrete mattresses, rock and/or artificial fronds; and
- Inter-array cabling linking the individual wind turbine generators to the offshore substations, end links and inter-connections between substations (totalling approximately 1,036km of inter-array cabling);

2.2.3 The Proposed Development will have an approximate installed capacity of around 2,300MW and will comprise an array area of approximately 775 square kilometres (“km²”).¹

2.2.4 The construction of the Proposed Development is anticipated to take up to three years, as detailed in section 3.4 of the Scoping Report with the operational lifetime of the Proposed Development assumed to be 50 years, followed by a period of decommissioning.

2.2.5 It is noted that the Scoping Report lists the ‘Proposed Development’ but does not clearly establish all activities for which ‘regulatory approval’ will be sought.² Regulatory approvals will be required for all construction activities, whether as part of the original construction or any subsequent alteration or improvement, any deposit on, or removal from on or under, the seabed of substances, any dredging and deposit, and any use of explosive substances. Any reference to the ‘Proposed Development’ in this Scoping Opinion should be taken, as appropriate, to include all activities in connection with the construction, operation, maintenance (including ‘change-outs’ of components) and decommissioning of the ‘Proposed Development’ for which a regulatory approval will be needed.

2.3 Onshore/Planning

2.3.1 The Scottish Ministers are aware the Developer has sought a separate scoping opinion from East Lothian Council for the associated onshore transmission 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.

¹ There is no requirement for s.36 consents to include a stated capacity.

² Regulatory approval is defined as a ‘marine licence’ in The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended)

2.4 The Scottish Ministers' Comments

Description of the Proposed Development

- 2.4.1 Section 3.5 of the Scoping Report proposes that the estimated annual and total operations and maintenance activities will be detailed within the Design Envelope of the EIA Report. The Scottish Ministers advise that the EIA Report should provide a full description and consideration of the nature and scope of these activities, including the types of activity, their frequency, and how activities will be carried out for the Proposed Development. This should include consideration for the potential overlapping of activities with those required for the Seagreen Alpha Offshore Wind Farm and the Seagreen Bravo Offshore Wind Farm, collectively referred to as "Seagreen". Such proposed activities may require to be permitted by a marine licence issued for the Proposed Development, unless an exemption applies.³
- 2.4.2 Section 3.6 of the Scoping Report proposes to provide an overview of the estimated decommissioning activities for the Proposed Development and an assessment of the potential effects on receptors of this phase. The EIA Report should include the rationale in support of the assessment of potential significant effects during the decommissioning phase. Any uncertainty on the impacts upon receptors from activities during decommissioning should be clearly explained, along with the implications for the assessment of significant effects.
- 2.4.3 The Scoping Report identifies the potential need for seabed preparation for each foundation type and cabling. In addition, it refers to the possibility of excavation to access and remove any debris below the seabed surface. Should seabed preparation involve dredging, the EIA Report must identify the quantities of dredged material and identify the likely location for deposit. The Developer may also be required to submit pre-dredge sample analysis, this should include supporting characterisation of the new or existing deposit sites. Any seabed levelling or removal of substances from on or under the seabed (including dredging and 'grapnel runs') will require consideration in the EIA Report and may require a marine licence.
- 2.4.4 Section 3.3.8 indicates that the inter-array cables will be buried where possible. However, the design envelope parameters detailed in table 3.11 suggest a minimum burial depth of 3m as the worst case scenario. Similarly section 3.3.9 of the Scoping Report proposes that the export cables will have a burial depth of between 0m and 3m per cable yet the design envelope parameters detailed in table 3.12 suggest a minimum burial depth of 3m as the worst case scenario. In addition, the cable trench for the export cable is described as up to 2m wide whilst the design envelope parameters detailed in table 3.12 detail the width as 1 metre. The EIA Report must be clear on the maximum trench width and range of burial depths that have been considered

³ [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Order 2011 \(legislation.gov.uk\)](#) and [The Marine Licensing \(Exempted Activities\) \(Scottish Offshore Region\) Order 2011 \(legislation.gov.uk\)](#) (both as amended).

as part of the assessment. Where reliance is placed on a subsequent cable plan or cable burial risk assessment as mitigation, the EIA Report must explain how this measure will mitigate the effects, what measures are proposed for inclusion and the effectiveness and degree of confidence that can be placed on such measure. It is recommended that such plans are included alongside the EIA Report.

- 2.4.5 Section 3.3.9 of the Scoping Report identifies that further geophysical and geotechnical survey information will inform the requirements for cable protection. It is not clear if this is intended to be completed prior to the submission of the EIA Report. The EIA Report must provide a clear indication of the preferred and most likely route of the cable, the likelihood of suitable burial along that route, the types of cable protection which will be used and the locations and volumes of such protection. The EIA Report should describe the options, differences amongst them and provide an assessment of environmental effects that may result between one or the other (or combined) option.
- 2.4.6 Section 3.3.9 of the Scoping Report also states that several methods of installation of the export cables through the intertidal zone are being considered, including trenchless methods and open cut trenching. The EIA Report must describe and assess the options considered and the assessment of alternatives should explain the reasons for the selected options. The Scoping Report identifies that both of the proposed cable landfalls may be utilised due to the capacity of the Proposed Development. The EIA Report must make it clear what the site specific considerations are for each location in this assessment and should ideally include specification of the chosen method for each location.
- 2.4.7 Section 3.4 of the Scoping Report provides generalised detail of the construction phases planned over a period of three years if a s.36 consent and marine licences are granted, including pre-construction surveys. The EIA Report must describe and assess the environmental effects of the range of surveys which may be required, including in combination effects. The EIA Report must also include consideration of the options which will be assessed in relation to clearance of Unexploded Ordnance (“UXO”), the differences amongst them and an assessment of the environmental effects of these options, including in combination effects with other projects.
- 2.4.8 Section 3.3.5 of the Scoping Report highlights that the Developer is considering multiple design options for the wind turbine support structures and foundations. The Scottish Ministers advise that the EIA Report must include a full and detailed description of all the foundation options considered within the design envelope. For the avoidance of doubt, if this includes gravity base foundations then the associated environmental effects (such as any associated dredging) must be fully assessed within the EIA Report.
- 2.4.9 Table 2.1 of the Scoping Report identifies the information required for the description of the Proposed Development, which includes an estimate, by type and quantity, of expected residues and emissions. The Scoping Report indicates that the descriptive requirements of the EIA Regulations will be

developed upon in the EIA Report from the outline detailed in section 3 of the Scoping Report, however there is no reference to this estimate within section 3. For the avoidance of doubt, the EIA Report must provide the estimate of expected residues and emissions, for example drill cuttings where considered in the design envelope. Specific reference should be made to water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases, where relevant. This information should be provided in a clear and consistent fashion and may be integrated into the relevant aspect assessments.

Design Envelope

- 2.4.10 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 3.2 of the Scoping Report.
- 2.4.11 The Scottish Ministers advise that the Developer must make every attempt to narrow the range of options. Where flexibility in the design envelope is required, this must be defined within the EIA Report and the reasons for requiring such flexibility clearly stated. At the time of application, the parameters of the Proposed Development should not be so wide-ranging as to represent effectively different projects. To address any uncertainty, the EIA Report must consider the potential impacts associated with each of the different scenarios. The criteria for selecting the worst case and the most likely scenario, together with the potential impacts arising from these, must also be described. The parameters of the Proposed Development must be clearly and consistently defined in the application for the s.36 consent and marine licences and the accompanying EIA Report.
- 2.4.12 The Scottish Ministers will determine the application based on the worst case scenario. The EIA will reduce the degree of design flexibility required and the detail will 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 or 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.
- 2.4.13 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

- 2.4.14 The EIA Regulations require that the EIA Report include ‘a description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project 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 4.2 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. The Scottish Ministers advise however that these considerations must include how decommissioning has been taken into account within the design options. The Scottish Ministers advise that this must be based on the presumption of as close to full removal as possible of all infrastructure and assets and should consider the methods and processes of doing so.
- 2.4.15 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 Applicant has had regard to the mitigation hierarchy, including giving consideration to the avoidance of key receptors. Annex B of the Scoping Report provides a 'commitments register' which summarises the enhancement, mitigation and monitoring commitments referenced in the Scoping Report. Many of the commitments are to management or mitigation plans, however limited detail is provided regarding the content of these plans. 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 the 'commitments register' updated to account for the consultee comments on specific baseline assessment and mitigation attached in Appendix 1.

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 Applicant 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’s 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’s 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. The Scottish Ministers recommend the use of the Developer’s proposed ‘Road Map’ process in considering this factor further. 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 within the ecological topics of the EIA Report and there will be no standalone topic or chapter on climate. The Scottish Ministers are however 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. 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. Again, the Scottish Ministers recommend the use of your proposed ‘Road Map’ process in considering this factor further.

3.6 **Water Quality**

The Developer has not clearly identified any impacts on water quality in the Scoping Report and has not proposed any assessment in relation to water quality or to provide information for any Water Framework Directive consideration. Impacts on water quality are often identified from construction and dredging, the release of contaminated sediments, deposit of dredged material at sea and pollution events occurring from the works themselves (paints/chemicals/lubricants etc.). The omission of a water quality chapter or any identified requirement for water quality assessments (the Developer may wish to consider the UK's Clearing the Waters for All Guidance)⁴ is a significant omission from the Scoping Report and the Developer must give proper consideration to all elements likely to interact with the water environment which pose a risk to degradation of water quality, both within Scottish waterbodies and beyond.⁵

The Scottish Ministers advise that water quality should be scoped in to the EIA report. Consideration must be given to any inputs to the water environment during construction activities, during the operational life of the Proposed Development and during decommissioning activities and the effects of such inputs. As a minimum the EIA Report must cover the risk of INNS settlement and distribution, risks to water environment from operational cleaning and from paints and painting operations of the Proposed Development and the risk of inputs of any lubricant, chemicals or similar to water quality.

⁴ <https://www.gov.uk/guidance/water-framework-directive-assessment-estuarine-and-coastal-waters#carry-out-your-wfd-assessment-in-stages>

⁵ [Water Bodies Data Sheets \(sepa.org.uk\)](https://www.sepa.org.uk/water-bodies-data-sheets)

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 7 September 2020. The following bodies were consulted, those marked in bold provided a response, those marked in italics sent nil returns or stated they had no comments:

- **Angus Council**
- Arbroath Community Council
- *Berwick-upon-Tweed Town Council*
- Broughty Ferry Community Council
- **BT (Radio Network Protection Team) (“BT”)**
- Carnoustie Community Council
- Civil Aviation Authority (“CAA”)
- **Defence Infrastructure Organisation (Ministry of Defence) (“MOD”)**
- **Dundee City Council**
- **East Lothian Council**
- Eastern England Fish Producer’s Organisation
- English Parish Councils
- Eyemouth Fishery Office
- **Fife Council**
- Fintry Community Council
- **Fisheries Management Scotland (“FMS”)**
- **Forth District Salmon Fishery Board**
- **Forth Ports**
- Health and Safety Executive
- **Historic Environment Scotland**
- Inshore Fishery Group
- **Joint Radio Company (“JRC”)**
- Letham and District Community Council
- Long Distance Advisory Council
- **Mainstream Renewable Power Limited – on behalf of the Neart na Gaoithe Offshore Wind Farm (“NnG”)**
- Marine Mammal Organisation
- Marine Safety Forum
- Marine Scotland Compliance (local fisheries offices)
- **Maritime Coastguard Agency (“MCA”)**
- Monifieth Community Council
- *Monikie and Newbigging Community Council*
- Murroes and Wellbank Community Council
- **National Air Traffic Services (“NATS”)**
- National Trust for Scotland
- Natural England
- **NatureScot (previously known as Scottish Natural Heritage) (“NatureScot”)**

- **North and East Coast Regional Inshore Fishery Group (“NECRIFG”)**
- North Sea AC
- North Sea Fishermen’s Organisation
- **Northern Lighthouse Board (“NLB”)**
- *Northumberland Inshore Fisheries and Conservation Authority*
- **Northumberland County Council**
- Orkney Sustainable Fisheries
- Outer Hebrides
- Pelagic Advisory Council
- Prestonpans Community Council
- *Red Rock Power Limited – on behalf of the Inch Cape Offshore Wind Farm*
- **Royal Society for the Protection of Birds Scotland (“RSPB Scotland”)**
- **Royal Yachting Association Scotland (“RYA Scotland”)**
- **Scottish Borders Council**
- Scottish Canoe Association
- Scottish Creel Fishermen’s Federation
- *Scottish Environment Protection Agency*
- **Scottish Fishermen’s Federation (“SFF”)**
- Scottish Fishermen’s Organisation
- Scottish Government Planning
- Scottish Surfing Federation
- Scottish Wildlife Trust
- Shetland Shellfish Management Organisation
- Sports Scotland
- Surfers Against Sewage
- Tanent and Elphinstone Community Council
- Tealing Community Council
- The Crown Estate Scotland
- The Fish Producers’ Organisation
- The Fisheries Liaison with Offshore Wind and Wet Renewables Group
- Transport Scotland Ports and Harbours
- **UK Chamber of Shipping (“CoS”)**
- Visit Scotland
- West Barns Community Council
- West Coast Regional Inshore Fishery Group
- *Whale and Dolphin Conservation*

4.1.2 The Developer included specific topic related questions within the Scoping Report to which the consultees were directed as part of the consultation.

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

4.2 Responses Received

4.2.1 From the list above a total of 23 representations were received. Advice was also provided by the MAU, MSS 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 regard 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. The Scottish Ministers highlight that 4 separate responses were provided by MSS as part of their advice, each are attached within Appendix I and where referenced in the Scoping Opinion are identified by the relevant date. In addition, an updated representation from NatureScot was received and again is attached within Appendix I.

5. Interests to be considered within the EIA Report

5.1 Introduction

5.1.1 This section contains the Scottish Ministers' opinion on whether the impacts identified in the Scoping Report are scoped in or out of the EIA Report. The Scottish Ministers advise that the representations from consultees and advice from MAU, MSS and TS must be considered in conjunction with the Scoping Opinion and with the expectation that recommendations and advice as directed through this Scoping Opinion are implemented.

5.2 Physical Processes

5.2.1 The Developer's consideration of the potential impacts on physical processes during the different phases of the Development and whether they should be scoped in or out of the assessment within the EIA Report are detailed in Tables 6.3 and 6.4 of the Scoping Report. The Scottish Ministers agree with the receptors and potential impacts for physical processes detailed and scoped in within Table 6.3 of the Scoping Report. Further, the Scottish Ministers agree the transboundary impacts of marine physical processes receptors can be scoped out of any further assessment within the EIA Report.

5.2.2 The Scottish Ministers advise however that full consideration and assessment of the potential impacts upon the Firth of Forth Banks Complex nature conservation Marine Protected Area ("ncMPA") must be included in the EIA Report, including all of the points raised by NatureScot in this regard. In addition, the Scottish Ministers highlight NatureScot's representation regarding the assessment approach in relation to Firth of Forth Banks Complex ncMPA, including the provision of more detailed maps in the EIA Report.

5.2.3 Similarly, the Scottish Ministers agree with NatureScot regarding the inclusion of coastal recession within the assessment of the changes to beach morphology, hydrodynamics or sediment transport within the EIA Report. The Scottish Ministers also highlight NatureScot's recommendation that potential beach lowering is explored, which will inform appropriate cable burial depth in order to provide necessary adaption to this aspect of climate change.

5.2.4 The Scottish Ministers do not agree with the Developer's proposal to scope out the effects of scour of seabed sediments based on its proposed use of scour protection to reduce the risk. The effects of scour and furthermore, the effects of scour protection, must be taken forward and assessed in the EIA Report. This view is supported by the representations from NatureScot and SFF together with the advice from MSS dated 19 November 2020 (MSS November Advice") which should all be fully addressed within the EIA Report.

5.2.5 In addition, the Scottish Ministers advise that further discussion on the methodology for hydrodynamic and hydro-sedimentary modelling is required. This should be undertaken through the Developer's 'Road Map' process and include spatial and temporal scope, nature of outputs including how they are presented and key modelling assumptions.

- 5.2.6 With regards to data sets, the Scottish Ministers are broadly content with the data sets identified in Table 6.1, however recommend the consideration of the additional datasets identified in the advice from MSS dated 10 December 2020 (“MSS December Advice”). In addition, the Scottish Ministers advise that an assessment of real suspended particulate matter is included in the EIA Report. This view is supported by the representation from SFF and the MSS December Advice.
- 5.2.7 In relation to mitigation, the Scottish Ministers agree with NatureScot that the full range of mitigation techniques and published guidance must be discussed in the EIA Report for impact pathways identified and scoped in. The Scottish Ministers note that the measures identified in the Scoping Report are limited in detail and it is therefore difficult to provide any further advice outwith the guidance provided in the section 3.3 of this Scoping Opinion. The Scottish Ministers highlight however the representation from SFF and the MSS December Advice regarding the validation of numeric modelling.
- 5.2.8 The Scottish Ministers agree with NatureScot’s representation regarding the consideration of the cumulative effect of key impacts, such as physical change from the Proposed Development in combination with neighbouring wind farms in the Forth and Tay area, especially in relation to the impacts on the Firth of Forth Banks Complex ncMPA. The Scottish Ministers also advise that consideration should be given to NatureScot’s comments on the presentation of this analysis.
- 5.2.9 Finally, the Scottish Ministers, note that the Thorntonloch landfall location is within a bathing water. The Scottish Ministers advise that the EIA Report should include consideration of any effects on the water quality of the bathing water from the activities associated with the construction, operation and maintenance of the Proposed Development, these may vary depending on the chosen construction method for the cable landfall. Furthermore, this consideration must include appropriate mitigation measures, such as avoiding certain elements of work during SEPA’s defined ‘bathing season’. The Developer may wish to consider SEPA’s standing advice ([Planning | Scottish Environment Protection Agency \(SEPA\)](#)).

5.3 Subsea Noise

- 5.3.1 The Scottish Ministers advise that the potential effects from and assessment of subsea noise generated from the activities associated with the construction, operation, maintenance and decommissioning of the Proposed Development will be considered in the relevant receptor chapters below.

5.4 Airborne Noise

- 5.4.1 The Scottish Ministers agree that the assessment of airborne noise can be scoped out of the EIA Report however highlight the representation from East Lothian Council.

5.5 Offshore Air Quality

- 5.5.1 The Developer's consideration of the potential impacts on air quality during the different phases of the Proposed Development are detailed in Table 6.11 of the Scoping Report. The Developer proposes to scope out all of the identified impacts from the assessment within the EIA Report.
- 5.5.2 The Scottish Ministers are satisfied that, whilst there are likely to be some dust emissions throughout the phases of the Proposed Development, these are not likely to have a significant effect on air quality. The Scottish Ministers are therefore content, based on the embedded mitigation detailed in section 6.4.4 of the Scoping Report, for the impacts from the generation of dust and particulates at all stages of the Proposed Development to be scoped out.
- 5.5.3 The Scottish Ministers however do not agree with the Developer's proposal to scope out identified impacts of atmospheric and exhaust emissions throughout all the phases of the Proposed Development. The Scottish Ministers refer to section 3.5 of this Scoping Opinion and highlight the requirement for the EIA Report to include a GHG Assessment which should be based on a LCA approach. The Scottish Ministers also highlight the comments of East Lothian Council in relation to the potential positive impacts on air quality from the Proposed Development.

5.6 Benthic Ecology

- 5.6.1 The Scottish Ministers are content with the Proposed Development study area however advise that the regional study area should be reduced. The Scottish Ministers advise that the regional study area should focus on the neighbouring consented wind farms (Seagreen, Neart na Gaoithe and Inch Cape), the proposed Marr Bank wind farm, each of their export cable corridors, the Firth of Forth Banks Complex ncMPA and the areas between each of these sites. This view is supported by NatureScot's representation and the MSS November Advice. In addition, the Scottish Ministers advise the Developer to implement the recommendation of MSS regarding the map shown in Figure 7.1 of the Scoping Report.
- 5.6.2 With regards to the characterisation of the baseline, the Scottish Ministers advise that the [Feature Activity Sensitivity Tool](#) must be utilised as recommended by NatureScot in its representation. In addition, the Scottish Ministers direct the Developer to the MSS November Advice regarding the required detail from the surveys, including when additional drop down video is expected. The Scottish Ministers agree with NatureScot's recommendation that the results of the site specific surveys must be reviewed as part of the Developer's proposed 'Road Map' process to ensure the baseline has been accurately captured.

- 5.6.3 The Scottish Ministers advise that the representation from NatureScot together with the MSS November Advice and the MSS December Advice must be fully addressed in relation to the impacts on benthic subtidal and intertidal ecology in the EIA Report. The Scottish Ministers highlight the concerns raised by both regarding the presentation of information relating to the foundation types being considered within the design envelope. For the avoidance of doubt, the Scottish Ministers advise that the EIA Report must provide clear identification and consideration of the worst case scenario, which must include the impacts on the Firth of Forth Banks Complex ncMPA.
- 5.6.4 Within Table 7.4 of the Scoping Report the Developer details the potential impacts on benthic subtidal and intertidal ecology during the different phases of the Proposed Development which they propose to scope in for assessment within the EIA Report. The Scottish Ministers agree with the receptors and potential impacts detailed and scoped in however advise that the representations of NatureScot and SFF together with the MSS November Advice and the MSS December Advice regarding habitat loss or disturbance, suspended sediments and colonisation of hard structures, must be fully addressed by the Developer and each of the recommendations implemented.
- 5.6.5 With regards to habitat loss or disturbance, this includes consideration and assessment of the impacts from all pre-construction seabed preparation works and the introduction of materials for scour protection in the EIA Report. In addition, the Scottish Ministers advise that the Developer must include assessment of habitat loss to each specific feature listed in the Firth of Forth Banks Complex ncMPA together with the cumulative impacts of the Proposed Development and Seagreen.
- 5.6.6 In relation to the creation and dispersion and settlement of suspended sediments, the EIA Report must consider and assess the impacts of differing foundation types and construction or decommissioning methods. Furthermore, this must include consideration of the differing impacts on different habitats and species. The Scottish Ministers also advise that the impact of increased suspended sediment concentrations on primary productivity and the potential for it to smother fish eggs and larvae during critical spawning periods must be considered and assessed in the EIA Report.
- 5.6.7 With regards to the impacts of colonisation of hard structures the Scottish Ministers highlight the importance of this impact when considering the potential spread of marine invasive non-native species and highlight the representation of NatureScot together with the MSS November Advice and the MSS December Advice and the recommendations therein which should be actioned by the Developer. In addition, the Scottish Ministers agree with NatureScot's recommendation regarding a commentary on the stabilisation operations and advise that this must be included in the EIA Report. Finally the Scottish Ministers highlight NatureScot's representation regarding avoiding the use of protective material and minimising the amount of hard substrate material used during operations and maintenance. The Scottish Ministers agree that a 'worst case quantity' for the full lifetime of the Proposed Development must be included and assessed within in the EIA Report, this

must include consideration of how they can be recovered during decommissioning.

- 5.6.8 In addition, to the impacts identified in Table 7.4 of the Scoping Report, the Scottish Ministers advise that impacts to key prey species and their habitats throughout all phases of the Proposed Development, both alone and in combination with the other wind farms in the Forth and Tay area, are scoped in and must be considered and assessed in the EIA Report. This view is supported by the representations from NatureScot together with the MSS November Advice and the MSS December Advice, whose comments should all be fully addressed within the EIA Report.
- 5.6.9 The Scottish Ministers also advise that the impact of changes in hydrodynamics and sediment movement on the benthic communities is scoped in and must be considered and assessed in the EIA Report. Furthermore, the impact on the sediment and benthic communities from the clearance of UXO from the site of the Proposed Development is also scoped in and must be considered and assessed in the EIA Report. The Scottish Ministers also advise that if drilling is being considered in the design envelope then the impact of drilling, and any deposit of arisings, on the benthic communities is also scoped in and must be considered and assessed in the EIA Report. These views are supported by the MSS November Advice, whose comments should be fully addressed within the EIA Report. Finally, for the avoidance of doubt, the Scottish Ministers advise that the impact on invertebrates from electromagnetic fields (“EMF”) from subsea electromagnetic cables is scoped in and must be considered and assessed in the EIA Report. The effects of EMF from both Alternating Current and Direct Current cables, and the interaction with the local natural electromagnetic environment, and impacts on electro-sensitive and magneto-sensitive species should be evaluated. This view is supported by the MSS November Advice.
- 5.6.10 Within Table 7.5 of the Scoping Report, the Developer details the potential impacts on benthic subtidal and intertidal ecology during the different phases of the Proposed Development which they propose to scope out of assessment from the EIA Report. The Scottish Ministers do not agree with the Developer’s proposal to scope out the impacts from release of sediment bound contaminants and advise that at this stage and in the absence sediment chemistry sampling, the potential for impacts must be assessed in the EIA Report. This view is supported by the SFF representation and the advice from MSS dated 5 February 2021 regarding benthic ecology. With regards to the remainder of Table 7.5, the Scottish Ministers agree that the impact pathways detailed in the Scoping Report are scoped out, this view is supported by the NatureScot representation and the advice of MSS.
- 5.6.11 With regards to the impact assessment approach, the Scottish Ministers highlight and agree with NatureScot’s representation regarding the requirement to quantitatively describe the impact of habitat loss or disturbance, both temporary and permanent, from the Proposed Development alone and in combination with neighbouring wind farms. The Scottish Ministers advise that, if it is not possible to quantify the impacts, further discussion regarding a qualitative assessment will be required and the Scottish Ministers

recommend the use of the Developer's proposed 'Road Map' process in considering this factor further.

- 5.6.12 The Scottish Ministers advise that full consideration and clear assessment of the potential impacts on all the designated features on the Firth of Forth Banks Complex ncMPA must be included in the EIA Report, including all of the points raised by NatureScot in its representation and the MSS November Advice in this regard. The EIA Report must include consideration of all three areas within the Firth of Forth Banks Complex ncMPA, both alone and in combination, in respect of the offshore subtidal sands and gravels feature. In addition, the Scottish Ministers highlight NatureScot's representation regarding the assessment approach in relation to Firth of Forth Banks Complex ncMPA, including the provision of more detailed maps in the EIA Report.
- 5.6.13 The Scottish Ministers advise that the EIA Report must include an assessment quantifying the likely impacts to key Priority Marine Features ("PMF") and consideration of whether this could lead to a significant impact on the national status of the PMFs affected. The Scottish Ministers also highlight NatureScot's representation regarding assessing the impacts on the geodiversity feature of the Barns Ness Coast Site of Special Scientific Interest.
- 5.6.14 The Scottish Ministers advise that the EIA Report must consider the cumulative effect of key impacts from the Proposed Development in combination with the neighbouring wind farms in the Forth and Tay area, especially in relation to the Firth of Forth Banks Complex ncMPA. The Scottish Ministers again advise that the representation of NatureScot and the MSS November Advice must be fully addressed in this regard and highlight NatureScot's representation regarding the assessment approach and format.
- 5.6.15 In relation to mitigation, the Scottish Ministers agree with NatureScot that the full range of mitigation techniques and published guidance must be discussed in the EIA Report for impact pathways identified and scoped in. The Scottish Ministers note that the measures identified in the Scoping Report are limited in detail and it is therefore difficult to provide any further advice outwith the guidance provided in section 3.3 of this Scoping Opinion. The Scottish Ministers highlight however the advice provided by NatureScot regarding the potential need for strategic monitoring regarding hard structure colonisation and change in community structure and local species.
- 5.6.16 The Scottish Ministers agree with NatureScot that there are unlikely to be any transboundary or cross border impacts on subtidal and intertidal benthic features and therefore they can be scoped out from any further assessment within the EIA Report.

5.7 Fish and Shellfish Ecology

- 5.7.1 The Scottish Ministers are content with the two study areas proposed by the Developer. This view is supported by the representations from NatureScot and SFF and the MSS November Advice. Please note that from hereon in, diadromous fish will be considered separately from marine fish and the Scottish Ministers' advice is detailed in paragraphs 5.7.17 to 5.7.20.
- 5.7.2 With regards to the characterisation of the baseline, the Scottish Ministers highlight the concerns raised by NatureScot, MSS, SFF and NECRIFG regarding the use of current and relevant data. The Scottish Ministers advise that a further literature review must be completed to include the studies, reports and data detailed in the representations of NatureScot, SFF and NECRIFG and the MSS November Advice. Furthermore, the Scottish Ministers highlight the recommendation by MSS regarding the presentation of some of this data.
- 5.7.3 In addition, the Scottish Ministers highlight NatureScot's representation regarding key species and habitats and advise that it must be fully considered and actioned. In particular, the Scottish Ministers agree with NatureScot's recommendation that the EIA Report must include consideration of those fish species which provide an important function as a key prey resource (such as herring, sandeels and sprat) and the implications for predator/prey interactions. This view is supported by Scottish Ministers based on the MSS November advice which recommends that the EIA Report should also identify those fish species which are PMFs. The Scottish Ministers recommend the use of the Developer's proposed 'Road Map' process to agree the relevant species and assessment process.
- 5.7.4 With regards to shellfish the Scottish Ministers advise that ocean quahog aggregations must be included within the fish and shellfish assessment of the EIA Report. In addition, the Scottish Ministers refer to the MSS November Advice in relation to the benthic section of Scoping Report, which includes information on the expected detail of the baseline surveys identifying syphons of ocean quahogs. The Scottish Ministers also advise that the Developer must undertake survey work of suitable habitat and substrate type for nephrops and their spawning grounds to establish their existence within the Proposed Development area. This view is supported by the representations of SFF and NECRIFG together with the MSS November Advice and the MSS December Advice.
- 5.7.5 The Scottish Ministers advise, with regards to identification of suitable habitat for sandeels and herring spawning and nursery grounds, further review is required and recommend the use of the Developer's proposed 'Road Map' process in this regard. The Scottish Ministers highlight the representation provided by NatureScot together with the MSS November Advice and the MSS December Advice and advise the Developer to fully consider these as part of the 'Road Map' process.
- 5.7.6 Within Table 7.9 of the Scoping Report the Developer details the potential impacts on fish and shellfish during the different phases of the Proposed

Development which it proposes to scope in for assessment within the EIA Report. The Scottish Ministers agree with the receptors and potential impacts detailed and scoped in however advise that the representations from NatureScot, SFF and NECRIFG together with the MSS November Advice and the MSS December Advice regarding habitat loss or disturbance, EMF from subsea electromagnetic cabling, underwater noise, particle motion and increased suspended sediments, must be fully addressed by the Developer and each of the recommendations implemented.

- 5.7.7 With regards to habitat loss or disturbance, the Scottish Ministers advise that consideration and assessment of the impacts from all pre-construction seabed preparation works must be included in the EIA Report. The Scottish Ministers also advise that in relation to the assessment of impacts from EMF from subsea electromagnetic cabling this must consider all relevant fish species, including elasmobranch species and nephrops.
- 5.7.8 In relation to underwater noise, the Scottish Ministers advise that the EIA Report must consider the hearing ability of the fish species when assessing impacts and therefore consideration must be given to sound pressure and particle motion. In addition, consideration must be given to the physiological and behavioural impacts of underwater noise on fish. Furthermore, impacts from pre-construction noise, including UXO clearance, must be considered and assessed. With regards to UXO clearance, the Scottish Ministers advise that fish impact thresholds must be applied however the impact on shellfish will require to be considered qualitatively.
- 5.7.9 With regards to the creation, dispersion and settlement of suspended sediments, the Scottish Ministers advise that the EIA Report must consider and assess the impacts on fish and shellfish ecology of differing foundation types and construction and decommissioning methods. This must include consideration and quantification of the differing impacts on different habitats and species. The Scottish Ministers also advise that the impact of increased suspended sediment and the potential for it to smother fish eggs and larvae during critical spawning periods must be considered and assessed in the EIA Report.
- 5.7.10 In addition to the impacts identified in Table 7.9 of the Scoping Report, the Scottish Ministers advise that impacts to key prey species and their supporting habitats throughout all phases of the Proposed Development, both alone and in combination with the other wind farms in the Forth and Tay area, are scoped in and must be considered and assessed in the EIA Report. This must include consideration of how this loss or disturbance may affect the recruitment of key prey species through impacts to spawning or nursery ground habitats. This view is supported by the representation of NatureScot together with the MSS November Advice and the MSS December Advice, whose comments should all be fully addressed within the EIA Report.
- 5.7.11 Within Table 7.10 of the Scoping Report, the Developer details the potential impacts on fish and shellfish ecology during the different phases of the Proposed Development which they propose to scope out of assessment from the EIA Report. The Scottish Ministers do not agree with the Developer's

proposal to scope out the colonisation of hard structures and advise the impacts from this must be assessed in the EIA Report. This view is supported by the NatureScot representation together with the MSS November Advice and the MSS December Advice.

- 5.7.12 With regards to the remainder of Table 7.10 the Scottish Ministers agree that the impact pathways detailed in the Scoping Report are scoped out, this view is supported by the MSS November Advice. The Scottish Ministers highlight the representations made by the SFF and FMS.
- 5.7.13 With regards to the impact assessment approach, the Scottish Ministers highlight and agree with NatureScot's representation regarding the requirement to quantitatively describe the impact of habitat loss or disturbance, both temporary and permanent, from the Proposed Development alone and in combination with neighbouring wind farms. The Scottish Ministers advise that if it is not possible to quantify the impacts then further discussion and agreement regarding a qualitative assessment, which must also consider indirect effects to predator species, will be required. The Scottish Ministers recommend the use of the Developer's proposed 'Road Map' process in considering this factor further. In addition, the Scottish Minister highlight NatureScot's representation regarding the differing and varying impacts depending on the foundation type and installation methods used and emphasise the importance of the presentation of information to enable cross referencing and clear identification of the worst case scenario.
- 5.7.14 The Scottish Ministers advise that full consideration and clear assessment of the potential impacts to ocean quahog aggregations within the Firth of Forth Banks Complex ncMPA must be included in the EIA Report, including all of the points raised in the NatureScot representation and the MSS November Advice in this regard. The EIA Report must include consideration of all three areas within the Firth of Forth Banks Complex ncMPA, both alone and in combination. In addition, the Scottish Ministers highlight NatureScot's representation regarding the assessment approach in relation to Firth of Forth Banks Complex ncMPA, including the provision of more detailed maps in the EIA Report.
- 5.7.15 The Scottish Ministers advise that the EIA Report must include an assessment quantifying the likely impacts to key PMFs and consideration of whether this could lead to a significant impact on the national status of the PMFs affected. The Scottish Ministers also advise that the EIA Report must consider the cumulative effect of key impacts from the Proposed Development in combination with the neighbouring wind farms in the Forth and Tay area, especially in relation to the Firth of Forth Banks Complex ncMPA. This must include the cumulative effect of key impacts such as habitat loss or change especially in relation to key fish and shellfish species that contribute ecological importance as a prey resource.
- 5.7.16 In relation to mitigation, the Scottish Ministers agree with NatureScot that the full range of mitigation techniques and published guidance must be discussed in the EIA Report for impact pathways identified and scoped in. In addition, the Scottish Ministers draw attention to the MSS November Advice on

proposed mitigation for marine fish. Furthermore, the Scottish Ministers highlight the advice provided in the NatureScot representation and the MSS November Advice regarding the potential need for strategic monitoring.

- 5.7.17 The Scottish Ministers advise that diadromous fish must be assessed separately from other marine fish and in doing so recommend the use of the Developer's proposed 'Road Map' process to agree the scope of the assessment, including agreement on the characterisation of the baseline. The Scottish Ministers highlight the representations of NatureScot and FMS and the MSS November Advice and advise the Developer to fully consider these as part of the 'Road Map' process. In particular, the Scottish Ministers draw attention to the comments regarding the relevance and age of the literature review relative to local migration of salmon and sea trout together with the concerns regarding how the timing of fish migration will be established and used, in particular for both Atlantic salmon smolts and adult Atlantic salmon. The Scottish Ministers also advise that Atlantic salmon will be considered within the HRA however potential effects on sea lamprey and river lamprey should be assessed within the EIA Report.
- 5.7.18 With regards to Table 7.9 of the Scoping Report, the Scottish Ministers advise that these impacts are also relevant to diadromous fish and are scoped in for assessment within the EIA Report. For avoidance of doubt, the impacts to key prey species and their supporting habitats as detailed in the representation of NatureScot, are also scoped in and must be considered and assessed in the EIA Report in relation to diadromous fish. The Scottish Ministers advise that the MSS November Advice regarding underwater noise, including as a result of UXO clearance, and effects from EMF from subsea electromagnetic cabling (including potential effects on migrating diadromous fish which are navigating using geomagnetic cues) must be fully considered by the Developer. The Scottish Ministers also highlight the MSS November Advice regarding the impact on diadromous fish from potential reef effects of the structures and advise that this is scoped in for assessment within the EIA Report. With regards to Table 7.10 of the Scoping Report the Scottish Ministers do not agree with the Developer's proposal to scope out the colonisation of hard structures and advise the impacts from this on diadromous fish must be assessed in the EIA Report.
- 5.7.19 With regards to mitigation of the potential impacts on diadromous fish, the Scottish Ministers highlight the MSS November Advice in relation to the effectiveness of ramp-up and soft-start piling and the consideration of timings for carrying out works. The Scottish Ministers also draw attention to the representation from NatureScot and the MSS November Advice regarding the potential need for strategic monitoring.
- 5.7.20 The Scottish Ministers advise that the EIA Report must consider the cumulative effect of key impacts from the Proposed Development in combination with the neighbouring wind farms in the Forth and Tay area, in relation to diadromous fish. This view is supported by NatureScot. In addition, the Scottish Ministers highlight the representation of NatureScot and the MSS November Advice regarding consideration of cross border impacts from the Proposed Development.

5.7.21 As detailed above, the Scottish Ministers recommend the Developer to consider this receptor further through their proposed 'Road Map' process so to agree the scope of assessment for diadromous fish. The Scottish Ministers also highlight the representation from FMS.

5.8 Marine Mammals

5.8.1 With regards to the study areas, the Scottish Ministers advise that the species specific Management Unit must be used as the baseline reference population, for the identification of potential cumulative projects and informing the consideration of designated sites for marine mammals, rather than the proposed North Sea Management Unit. This view is supported by the representation from NatureScot and the MSS November Advice.

5.8.2 The Scottish Ministers are broadly content with the data sets identified in Table 7.11 and section 7.3 of the Scoping Report, however highlight the concerns raised in the MSS November Advice regarding the use of a harbour porpoise model by Heinanen and Skov (2015) and therefore recommend the use of the anticipated revised analysis as referenced in the MSS November Advice. In addition, the Scottish Ministers advise that all additional data sources, references of note and resources identified in the representation from NatureScot and the MSS November Advice must be fully considered by the Developer.

5.8.3 The Scottish Ministers also advise that the recommendations from NatureScot and MSS regarding the key species and their reference populations required for HRA, EIA and European Protected Species ("EPS") licensing must be fully implemented by the Developer. The Scottish Ministers agree with NatureScot's comments regarding the Developer's work on correction factors for availability bias and the need for any recommendation for this to be sufficiently evidenced. The Scottish Ministers advise that the density values for all the key species and also the assessment process for harbour seal require further discussion and must be agreed through the Developer's proposed 'Road Map' process. This view is supported by the representation from NatureScot and the MSS November Advice.

5.8.4 With regards to the designated seal haul outs the Scottish Ministers highlight the advice provided by NatureScot in its representation and agree that the proposed construction activities at the landfall locations and those associated with the cable installation are unlikely to affect any individuals hauled out at the nearest designated seal haul out site, namely Fast Castle.

5.8.5 Within Table 7.13 of the Scoping Report the Developer details the potential impacts on marine mammals during the different phases of the Proposed Development which it proposes to scope in for assessment within the EIA Report. The Scottish Ministers agree with the receptors and potential impacts scoped in, however the missing pathways and elements identified and detailed in the representation from NatureScot and the MSS November Advice, regarding pre-construction noise impacts, foundation installation methods, floating foundations, disturbance from vessel use and other construction

activities, change in prey species availability and decommissioning impacts, must be fully considered and assessed in the EIA Report.

- 5.8.6 The Scottish Ministers advise that the EIA Report must assess the all phases of the Proposed Development from pre-construction to decommissioning. This must include full consideration and assessment of the impacts from the significant underwater noise which may occur during pre-construction activities, including geophysical surveys and UXO clearance. These impacts will also require to be considered under EPS licensing and potentially in combination with other noisy activities. In addition, decommissioning impacts must assessed on the basis of as close to full removal as possible of all infrastructure and assets.
- 5.8.7 The Scottish Ministers advise that the missing impact pathways associated with floating foundations must be fully considered and assessed in the EIA Report, including underwater noise, if installation of anchors requires piling, entanglement risk, EMF from mid-water cables, changes in prey density and distribution and displacement or barrier effects.
- 5.8.8 With regards to the proposed approaches to noise modelling and methods to model marine mammal population impacts, the Scottish Ministers advise that the Developer must fully consider the advice provided by NatureScot in its representation and the MSS November Advice. The Scottish Ministers advise that noise modelling and population modelling will be necessary for any pile driving activity and UXO clearance and the methodology must be agreed via the 'Road Map' process. In addition, the Scottish Ministers highlight the concerns raised by both NatureScot and MSS regarding the proposed use of the 1% conversion factor and advise that if the Developer wishes to continue with this proposed methodology then further evidence together with a robust justification will be required and must be agreed through the 'Road Map' process. The Scottish Ministers recommend the use of the interim population consequences of disturbance model to assess impacts of both the Proposed Development alone and cumulative with other plans or projects in the region, a view supported by NatureScot and MSS. The Scottish Ministers advise that population modelling and the approach to cumulative impact assessment for marine mammals for HRA, EIA and EPS licensing requirements must be agreed via the 'Road Map' process and must include the consideration of UXO clearance.
- 5.8.9 Within Table 7.14 of the Scoping Report, the Developer details the potential impacts on marine mammals during the different phases of the Proposed Development which they propose to scope out of assessment from the EIA Report. The Scottish Ministers do not agree with the Developer's proposal to scope out EMF on the basis of the potential use of floating turbines in the Proposed Development and as indicated in paragraph 5.8.7 above the impacts of EMF from mid-water cables must be assessed. This view is supported by both NatureScot and MSS. With regards to the remainder of Table 7.14, the Scottish Ministers agree that the impact pathways detailed in the Scoping Report are scoped out, this view is supported by the MSS November Advice.

- 5.8.10 With regards to mitigation, the Scottish Ministers highlight the representation from NatureScot and the MSS November Advice and advise these must be fully considered by the Developer. The Scottish Ministers advise that a Vessel Management Plan and a Piling Strategy will be key components of the Proposed Development and refer to the guidance provided in section 3.3 of this Scoping Opinion regarding necessary detail required within the EIA Report. The Scottish Ministers agree with NatureScot that the approach to noise mitigation for the Proposed Development will be informed by best available evidence, including any outputs from work undertaken during construction of the wind farms in the Moray Firth and Forth and Tay area and also English waters. The Scottish Ministers advise that additional underwater noise abatement methods and technologies must be considered in the EIA Report and highlight the commissioned reports referenced in the NatureScot representation.
- 5.8.11 In relation to transboundary impacts, the Scottish Ministers agree with the representation from NatureScot regarding the lack of detail provided in the Scoping Report in assessing the impacts on marine mammals but highlight the requirement to consider the cross border effects on the Berwickshire and North Northumberland Coast Special Area of C in relation to grey seals.

5.9 Offshore and Intertidal Ornithology

- 5.9.1 The Scottish Ministers are content with the proposed study areas and this view is supported by the representations from NatureScot and RSPB Scotland together with the MSS November Advice. With regard to baseline characterisation the Scottish Ministers highlight the comments in the MSS November Advice regarding the need for agreement on how the ornithology data described in section 7.4.1 of the Scoping Report will be used in assessment. The Scottish Ministers advise that discussion on this, including consideration of the soon to be published Marine Scotland commissioned study (referenced in the MSS November Advice) should be progressed and agreed via the Developer's proposed 'Road Map' process. In addition, the Scottish Ministers advise that the Developer must seek to characterise the baseline of the export cable route and recommend the use of the Developer's proposed 'Road Map' process in agreeing whether additional surveys are required and the subsequent assessment approach. This view is supported by the MSS November Advice.
- 5.9.2 The Scottish Ministers advise that the recommendations from NatureScot, RSPB Scotland and MSS regarding the key species, Special Protection Area ("SPA") connectivity, reference populations and additional data sources required for HRA and EIA must be fully implemented by the Developer. The Scottish Ministers note that the key species and SPA colonies or interests will be subsequently agreed as part of the HRA screening process, following the separate submission of the HRA screening Report by the Developer. For the avoidance of doubt, however the Scottish Ministers advise that any figures provided for this receptor group in the EIA Report must include the boundaries of the (now designated) Outer Firth of Forth and St Andrews Bay Complex SPA.

- 5.9.3 Within Table 7.16 of the Scoping Report the Developer details the potential impacts for offshore and intertidal ornithology during the different phases of the Proposed Development which it proposes to scope in for assessment within the EIA Report. The Scottish Ministers agree with the receptors and potential impacts scoped in, however advise that the impacts to key prey species and their habitats must be fully considered and assessed in the EIA Report. This view is supported by the representation from NatureScot and the MSS November Advice. The Scottish Ministers advise that these impacts, including consideration of the forthcoming reports referenced in the MSS November Advice, should be progressed via the Developer's proposed 'Road Map' process. If floating foundations are being considered as part of the Proposed Development, the Scottish Ministers highlight the comments in the MSS November Advice regarding the need for further discussion and agreement on the assessment approach for a mixed technology development.
- 5.9.4 With regards to the proposed assessment methods, the Scottish Ministers advise that the Developer must fully consider the representations from NatureScot (including its updated representation regarding displacement impacts for gannet) and RSPB Scotland and the MSS November Advice. Furthermore, the Scottish Ministers advise that discussion is required regarding barrier/displacement, collision risk, apportioning and population consequences, and strongly recommend the use of the Developer's proposed 'Road Map' process in agreeing the appropriate approaches and methods to use in the assessment.
- 5.9.5 Within Table 7.17 of the Scoping Report, the Developer details the potential impacts for offshore and intertidal ornithology during the different phases of the Proposed Development which they propose to scope out of assessment from the EIA Report. The Scottish Ministers do not agree with the Developer's proposal to scope out impacts associated with the installation of the export cable, especially given the significant overlap with the Outer Firth of Forth and St Andrews Bay Complex SPA. This view is supported by both NatureScot and MSS. As indicated in paragraph 5.91 above, the Scottish Ministers recommend the assessment approach agreed via the Developer's proposed 'Road Map' process. With regards to the remainder of Table 7.17, the Scottish Ministers agree that the impact pathways detailed in the Scoping Report are scoped out, this view is supported by the MSS November Advice.
- 5.9.6 With regards to cumulative assessment the Scottish Ministers advise that this should focus on the Proposed Development in combination with the other consented wind farms in the Forth and Tay area and also the proposed Marr Bank wind farm. In addition, the Scottish Ministers advise that additional wind farms located in Scottish and English waters may need to be considered and recommend that the list of wind farms to be included during the breeding season and non-breeding season assessment is agreed through the Developer's proposed 'Road Map' process. This is a view supported by the representation from NatureScot and the MSS November Advice, both of which should be fully considered by the Developer. The Scottish Ministers note the Developer's proposal to use the most recent collision risk modelling results for the consented wind farms in the Forth and Tay area considering the 'optimised projects', and advise that it may be appropriate to recalculate the project

specific effects should the as built project (e.g. as specified by the Design Specification and Layout Plan) differ from the development scenario previously assessed. In addition, the Scottish Ministers note that there are two s.36 consents for Inch Cape Offshore Wind Farm and advise that the Developer should consider using calculations based on both s.36 consents so that the worst scenario and most likely scenario are assessed.

5.9.7 With regards to mitigation the Scottish Ministers direct the Developer to the representation from NatureScot and furthermore, highlight the MSS November Advice regarding embedded mitigation and early commitment to an increased 'air gap'. The Scottish Ministers also highlight the potential need for strategic monitoring as referenced in the representation from NatureScot. In addition, the Scottish Ministers advises that further discussion regarding transboundary and cross border impacts is required and recommend this is progressed via the Developer's proposed Road Map' process.

5.9.8 The Scottish Ministers highlight the representations from NatureScot and RSPB Scotland and the MSS November Advice regarding the potential for the Proposed Development to have an adverse effect on site integrity for a number of seabird features and their colonies. The Scottish Ministers therefore advise that early consideration is given (on a without prejudice basis to the assessment process outcome) to undertake a parallel process relating to the derogation process under regulation 49 of The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) ("1994 Habitats Regulations") and regulation 29 of The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) Habitats Regulations ("2017 Offshore Habitats Regulations").

5.10 Commercial Fisheries

5.10.1 With regards to the characterisation of the baseline for assessment of effect on commercial fisheries, the Scottish Ministers highlight the MSS November Advice and advise that the recommendations to extend the range of landings data and to use the most up to date statistics must be implemented. In addition, the Scottish Ministers advise that the guidance and data detailed in the MSS November Advice must be considered, including the MSS guidance for assessing fisheries displacement once published.

5.10.2 Within Table 8.2 of the Scoping Report the Developer details the potential effects on commercial fisheries during the different phases of the Proposed Development which they propose to scope in for assessment within the EIA Report. The Scottish Ministers agree with the potential effects detailed and scoped in however advise that the representations from the SFF and NECRIFG together with the MSS November Advice must also be fully considered and addressed by the Developer.

5.10.3 The Scottish Ministers advise that a fisheries displacement assessment must be carried out to estimate any displacement levels. The assessment must include, but not be limited to, consideration of minimum operating space requirements for the range of fishing activities (deploying and hauling gear), vessel manoeuvrability, over trawl ability of cables and the cumulative impact

from any fisheries management measures within the Firth of Forth Complex ncMPA. The displacement assessment must include consideration of the effects of different types of foundations within the design envelope and also consideration of displacement of fishing to other areas as a result of loss of grounds if applicable. The MSS November Advice and the MSS December Advice supporting this view must be fully implemented by the Developer.

- 5.10.4 The Scottish Ministers also advise that the Developer must adopt a clear position on whether they will be content for fishing to continue over cables within the Proposed Development. This position must be adopted prior to the fisheries displacement assessment so the implications from this can be included in the assessment. If the Developer is content for fishing to continue over cables then the Scottish Ministers advise that a practical over trawlability study must be carried out in accordance with the recommendations of the MSS November Advice.
- 5.10.5 With regards to the Developer's proposed approach to assessing the potential effects on safety issues for fishing vessels, the Scottish Ministers agree with the representations from the SFF, NECRIFG together with the MSS November Advice and the MSS December Advice and advise that these effects must be considered and assessed separately from the Shipping and Navigation assessment relative to section 8.2 of the Scoping Report. This must include consideration of the risk of snagging fishing gear.
- 5.10.6 In addition to the effects identified in Table 8.2 of the Scoping Report, the Scottish Ministers advise that impacts to the sale of fish and the supply chain must be considered and assessed in the EIA Report. This view is supported by the representation from SFF and the MSS December Advice, whose comments should all be fully addressed within the EIA Report. In addition, the Scottish Ministers highlight the comments in the MSS November Advice regarding the provision of more detailed information for the decommissioning phase, in particular noting the potential safety hazard disused infrastructure left in the marine environment poses to commercial fishing.
- 5.10.7 With regards to cumulative impacts, the Scottish Ministers advise that the Developer must consider and assess the in combination effects from potential fisheries management measures within the overlapping proposed management area of the Firth of Forth Complex ncMPA together with any displacement, restriction of access or complete loss of fishing areas due to the Proposed Development.
- 5.10.8 The Scottish Ministers advise that in identifying appropriate mitigation measures, the Developer must consider the different types of fishing that takes place within the Proposed Development and engage with the wider fishing industry to seek broad agreement on measures proposed. The Scottish Ministers advise that when detailing the mitigation measures the Developer must clearly state commitments and explain any caveats to these commitments, such as EIA significance, so that stakeholders can easily understand the actual commitment(s) made. In addition, the Scottish Ministers emphasise the importance of engaging with the fishing industry throughout the

application process and highlight the comments from NECRIFG regarding consultation on the cable landfall site or sites.

- 5.10.9 The Scottish Ministers recommend the use of the Developer's proposed 'Road Map' process in considering this factor further. This should include agreement on the fisheries displacement assessment and the practical over trawlability study.

5.11 Shipping and Navigation

- 5.11.1 With regards to the proposed study areas, the Scottish Ministers highlight the representation of the CoS and recommend the use of the Developer's proposed 'Road Map' process in considering this factor further. This should include agreement on the extent of the shipping and navigation study area with regards to the buffer on the array western boundary and also agreement on the regional shipping and navigation study area.
- 5.11.2 In relation to the baseline datasets identified in the Scoping Report, the Scottish Ministers highlight the representations of the NLB and CoS. The Scottish Ministers advise that the range of incident data from Marine Accident Investigation Branch must be extended to prior to 2008. This view is supported by the representation from CoS. In addition, the Scottish Ministers highlight the recommendations from the CoS regarding vessel traffic surveys and advise the Developer to extend its discussions on this to include the CoS together with the other stakeholders identified in section 8.2.3.2 of the Scoping Report.
- 5.11.3 Within Table 8.5 of the Scoping Report the Developer details the potential impacts to shipping and navigation from safety zones and activities during the different phases of the Proposed Development which they propose to scope in for assessment within the EIA Report. The Scottish Ministers agree with the impacts detailed and scoped in, however advise that the representations from the MCA, NLB, Forth Ports Limited, CoS and RYA Scotland must be fully addressed by the Developer. With regards to the organisations identified in section 8.2.4 of the Scoping Report the Scottish Ministers advise that the North and East Coast Regional Inshore Fishery Group should be added and further highlight the suggestion from the MCA to consult the local Royal National Lifeboat Institution coxswain.
- 5.11.4 In relation to the proposed embedded mitigation measures, the Scottish Ministers highlight the representations from the MCA, NLB and RYA Scotland which must be fully addressed by the Developer. The Scottish Ministers advise the Developer use the 'Road Map' process to document discussions with RYA Scotland regarding identifying and agreeing effective modes of communication with recreational sailors.
- 5.11.5 With regard to potential cumulative effects, the Scottish Ministers highlight the representations from both the MCA and Forth Ports Limited, regarding the likely cumulative and in combination effects on shipping routes and the cumulative impacts of other windfarms in close proximity. The Scottish Ministers advise that these representations must be fully addressed in the EIA

Report by the Developer and further note the recommendations made by Forth Ports Limited.

5.12 Aviation, Military and Communications

- 5.12.1 With regards to the study area, the Scottish Ministers appreciate that this has been determined in relation to aviation receptors and therefore the infrastructure relating to the export cable corridor has not been considered. The Scottish Ministers however highlight the comments made by the MOD regarding relevant military considerations regarding the cable corridor and the landfall location or locations, including in relation to UXO clearance.
- 5.12.2 The Scottish Ministers highlight the representation by NATS which predicts that the Proposed Development is likely to cause the generation of false primary plots and also a reduction in the RADAR's probability of detection for real aircraft. NATS has also advised that the Proposed Development will likely have significant adverse impacts on the Air Traffic Control at both Prestwick Centre and Aberdeen Offshore. The NATS representation states that it objects to the Proposed Development and the Scottish Ministers therefore advise that this factor should be considered further via the Developer's proposed 'Road Map' process.
- 5.12.3 Within Table 8.7 of the Scoping Report, the Developer details the potential impacts to aviation, military and communications during the different phases of the Proposed Development which it proposes to scope in for assessment within the EIA Report. The Scottish Ministers agree with the impacts detailed and scoped in, however advise that the representations from the JRC, the Scottish Borders Council, BT, MOD and NATS must be fully addressed by the Developer.
- 5.12.4 Within Table 8.8 of the Scoping Report, the Developer details the potential impacts to aviation, military and communications during the different phases of the Proposed Development which it proposes to scope out of assessment from the EIA Report. The Scottish Ministers do not agree with the Developer's proposal to scope out potential impacts on civil airport patterns and procedures due to the presence of obstacles, and advise the impacts from this must be assessed in the EIA Report. This view takes into account the NATS representation and objection to the Proposed Development. Again the Scottish Ministers advise this factor, including this impact, should be considered further via the Developer's proposed 'Road Map'. Whilst the CAA have not provided any representation, the Scottish Ministers advise that the Developer should seek to engage with the CAA as part of this Road Map process.
- 5.12.5 With regards to the proposed embedded mitigation measures, the Scottish Ministers highlight the representation from the MOD which must be fully addressed by the Developer. This includes the MOD request for the Proposed Development to be fitted with MOD accredited aviation safety lighting in accordance with the Civil Aviation Authority Air Navigation Order 2016. The Scottish Ministers recommend that based on the MOD's representation regarding the impacts Primary Surveillance Radars at Leuchars Station and

the Air Defence Radars at RAF Brizlee Wood and RAF Buchan and the requirement of mitigation, that this should also be considered within the 'Road Map' process.

5.13 Marine Archaeology and Ordnance

5.13.1 The Scottish Ministers acknowledge the representations from HES and Fife Council and direct the Developer to the Fife Council comments regarding adopting multibeam scanning for potential seabed cultural heritage anomalies as part of its archaeological mitigation strategy. However, based on the representation from the Scottish Borders Council, the Scottish Ministers do not agree with the Developer's proposal to scope out the assessment of marine archaeology receptors. The Scottish Ministers that if the Developer requires further clarity on the required details of this assessment they should engage with the Scottish Borders Council.

5.14 Seascape, Landscape, Visual Resources and Cultural Heritage

5.14.1 Within Table 8.16 of the Scoping Report, the Developer details the potential impacts on seascape, landscape, visual resources and cultural heritage during the different phases of the Proposed Development, which it proposes to scope in for assessment within the EIA Report. The Scottish Ministers agree with the contents of this Table. Further, the Scottish Ministers are content that transboundary impacts on seascape, landscape, visual resources and cultural heritage setting are unlikely and can be scoped out of any further assessment within the EIA Report. With regards to the study areas identified and baseline information presented in the Scoping Report however, the Scottish Ministers provide the following additional comments for the Developer to action.

5.14.2 The Scoping Report refers to NatureScot visualisation guidance in relation to defining the size of the array study area, however the turbines considered within this guidance are significantly smaller than those of the Proposed Development. The Scottish Ministers advise that based on the heights of the turbines being considered, the study area must be extended beyond the proposed 50km zone of theoretical visibility ("ZTV") and should be informed by ZTV information. This view is supported by the representations of NatureScot, Northumberland Council, East Lothian Council and Scottish Borders Council, which should all be fully considered by the Developer within the EIA Report.

5.14.3 Further, with regards to the study area defined in figure 8.12 of the Scoping Report, the Scottish Ministers agree with the representation of NatureScot regarding the inclusion of all relevant offshore wind farms built, under construction, consented and proposed. This should therefore include details of Seagreen but also indicative information of the proposed Marr Bank wind farm. In addition, once the expanded array study area has been agreed, any additional wind farms within the area must be included. The Scottish Ministers also draw attention to the representation of East Lothian Council in relation to figure 8.12.

- 5.14.4 In relation to the desktop studies identified in Table 8.15 of the Scoping Report, the Scottish Ministers highlight the representations by Northumberland County Council, East Lothian Council and Scottish Borders Council. The Scottish Ministers advise that the updated management plans and further guidance documents highlighted by each of the local authorities must be included as baseline datasets in the Developer's assessment together with the local designations identified in the local authority representations. In addition, the Scottish Ministers agree with the advice of NatureScot, that the resources identified in Table 8.15 should be used together with the baseline coastal character assessment previously undertaken by the Forth and Tay offshore wind developer's group.
- 5.14.5 The Scottish Ministers also highlight the representations of the Scottish Borders Council and Northumberland County Council regarding the identification and addition of specific viewpoints, including sequential viewpoints and ones at a higher elevation, as well as sensitive receptors. Furthermore, the Scottish Ministers highlight the request by NatureScot of sight of the viewpoints to represent and clarify the likely extent of the visibility from the Angus coast, East Fife, Isle of May, East Lothian (including North Berwick Law and Dunbar) and Scottish Borders, St Abb's Head. In addition, the Scottish Ministers advise that the viewpoints and indeed receptors must be considered further once the extended array study area has been agreed and direct the Developer to the representations from NatureScot and the local authorities in this regard.
- 5.14.6 In addition, the Scottish Ministers highlight the representations made by NatureScot, Dundee City Council, Scottish Borders Council and East Lothian Council regarding consideration of the cumulative effect of the Proposed Development with other offshore wind farms. The Scottish Ministers advise that the cumulative effect requires to be fully considered and presented clearly within the assessment.
- 5.14.7 The Scottish Ministers advise that the size of the study array area and ZTV should be considered further within the 'Road Map' process together with the identification of receptors and viewpoint locations. The Scottish Ministers advise the Developer to include NatureScot, and each of the local authorities, in this process. Whilst the Scottish Ministers are aware that Angus Council, Fife Council and Dundee City Council have not raised significant concerns, this is in part based on their review of the array study area of 50km presented in the Scoping Report. In addition, the Scottish Ministers advise further local authorities may require to be included in light of the extended array study area. Whilst representations from Northumberland Coast AONB Partnership and Natural England have not been made, the Scottish Ministers agree with the Developer's identification of both these bodies as key stakeholders. The Scottish Ministers agree with Developer's intention to consult with these bodies in identifying the potential visual receptors and key viewpoints to inform the seascape, landscape, visual resources and cultural heritage baseline and assessments within the EIA Report. This view is supported by Northumberland County Council.

- 5.14.8 Within Table 8.17 of the Scoping Report, the Developer details the potential impacts on seascape, landscape, visual resources and cultural heritage during the different phases of the Proposed Development, which it proposes to scope out of assessment within the EIA Report. With regards to the likely effects of night time lighting on landscape and visual amenity, the Scottish Ministers do not agree with the Developer's proposal to scope this out. The Scottish Ministers advise that the impacts must be assessed in the EIA Report, including the long term impacts of night time lighting on both visibility and coastal character. This is based on the potential for the turbine lighting to be visible from over 50km and the lack of detail provided on lighting types, numbers, intensity and the likely cumulative position. This view is supported by the representations of NatureScot and the Scottish Borders Council (including its Landscape Architect), which should be fully considered by the Developer. In particular, the Scottish Ministers highlight the recommendation of NatureScot to consider the night time visualisations submitted by Moray West, which it considers to be good examples, together with NatureScot's expectation that the visualisations will follow its guidance. The Scottish Ministers advise that the selection of viewpoints should be considered further via the 'Road Map' process to ensure suitable selection, including appropriateness for assessing night time effects.
- 5.14.9 With regards to potential impacts on cultural heritage, the Scottish Ministers do not agree with the Developer's proposal to scope this out and advise that these must be assessed in the EIA Report. This is in part based on the understanding that the array study area will be extended and may therefore require further cultural heritage assets to be taken into account. This includes Lindisfarne Priory and Lindisfarne Castle which are located outside the current array study area but highlighted by Northumberland County Council as potentially being significantly impacted by the Proposed Development. Whilst the Scottish Ministers acknowledge the representation of Historic Environment Scotland, attention is drawn to the representations of East Lothian Council, Northumberland County Council, Fife Council and in particular the Scottish Borders Council, including its Archaeology Officer. In addition, the Scottish Ministers highlight the recommendation from MAU to include these impacts in the Socio-economic Impact Assessment. The Scottish Ministers also highlight the suggestion by Scottish Borders Council to conduct a Historic Environment Record ("HER") search of the Scottish Borders HER for heritage assets within the land-based zone of ZTV as well as considering other heritage assets at more elevated coastal cliff and higher inland. Finally, the Scottish Ministers note the request by Scottish Borders Council for the provision of ArcGIS compatible 'shapefiles' by the Developer.
- 5.14.10 With regards to the potential impacts on seascape character and marine based visual receptors, the Scottish Minister do not agree with the Developer's proposal to scope this out and advise that these must be assessed in the EIA Report. This view is supported by the Scottish Borders Council and the advice from MAU. The Scottish Ministers highlight the advice from MAU in relation to engaging with local communities in this regard. In addition, the Scottish Ministers highlight the representation of NatureScot regarding consideration of maritime receptors, such as recreational sailing and use of marinas, as well as cruise ship operators.

- 5.14.11 With regards to the export cable study area, the Scottish Ministers highlight the representation of East Lothian Council regarding the significant visual amenity of both landfall locations and the potential for significant adverse landscape and visual impacts if open cut trench is to be the preferred method of installation. The Scottish Ministers advise that the EIA Report should fully assess the visual impacts of the cable installation and detail the mitigation measures considered.
- 5.14.12 Finally, in relation to mitigation, the Scottish Ministers agree with NatureScot's representation regarding the principles and measures proposed in section 8.5.5 of the Scoping Report but advise that more detail and discussion is required and this should be taken forward as part of the 'Road Map' process. In the context of the required extension to the array study area and the alternatives being considered for the cable landfall locations, the Scottish Ministers advise that, at this stage, it is difficult to provide any further advice beyond the guidance detailed in section 3.3 of this Scoping Opinion.

5.15 Infrastructure and Other Users

- 5.15.1 The Scottish Ministers advise that in relation to the baseline environment the Developer must include the Neart na Gaoithe Offshore Wind Farm Environmental Statement as a desktop report. In addition, the Scottish Ministers highlight the advice from TS regarding confirmation of the potential impact from any increase in Heavy Goods Vehicles ("HGV") on the trunk road network if it is to be used in the construction of the Proposed Development. The Scottish Ministers advise that the Developer must establish and calculate if there will be an increase in HGV traffic and further if such increase will be above the thresholds set in the IEMA guidelines for the environmental assessment of road traffic. The Scottish Ministers advise that if the thresholds are breached then the Developer must fully assess the likely traffic and transportation impacts on traffic flows and transportation infrastructure as detailed in the advice from TS.
- 5.15.2 Within Table 8.19 of the Scoping Report the Developer details the potential impacts to infrastructure and other users from activities during the different phases of the Proposed Development which they propose to scope in for assessment within the EIA Report. The Scottish Ministers agree with the impacts detailed and scoped in, however advise that the representations from NnG, RYA Scotland and the advice from TS must be fully addressed by the Developer. In particular the Scottish Ministers highlight the comments from TS regarding abnormal loads and advise that if they are to be transported on the trunk road network then a full abnormal loads assessment report and a swept path analysis must be included in the EIA Report.
- 5.15.3 The Scottish Ministers agree that the potential impacts to infrastructure and other users from activities during the different phases of the Proposed Development detailed within Table 8.20 of the Scoping Report may be scoped out from further assessment within the EIA Report.

5.15.4 With regards to mitigation, as detailed in paragraph 5.11.4 of the Shipping and Navigation section above, the Scottish Ministers advise the Developer to use the 'Road Map' process to document discussions with RYA Scotland regarding identifying and agreeing effective modes of communication with recreational sailors. In addition, the Scottish Ministers highlight the representation from NnG recommending early engagement with them.

5.16 Offshore Socio-economics and Tourism

5.16.1 Within Table 8.23 of the Scoping Report the Developer details the potential impacts for socio-economics and tourism during the different phases of the Proposed Development which they propose to scope in for assessment within the EIA Report. The Developer does not propose to scope out any identified impacts from assessment at this stage.

5.16.2 The Scottish Ministers direct the Developer to the representations from the Scottish Borders Council and the SFF together with the MAU advice in relation to impacts for socio-economics and tourism and advise that these must be fully addressed. The Scottish Ministers advise, for the avoidance of doubt, that the socio-economic impacts from offshore and onshore activities and structures must be considered together to ensure links and interactions can be identified. In addition, the Developer must also consider the relationship of the potential impacts on visual amenity and cultural heritage with the impact on recreation and tourism in the areas and therefore socio-economics.

5.16.3 With regards to the study area, the Scottish Ministers direct the Developer to follow the recommendation of MAU in relation to assessing local and regional impacts and acknowledging different 'epicentres of impact'. The Scottish Ministers also advise that the Scottish Borders must be included in the socio-economics study area based on the proximity of the Proposed Development to the Berwickshire Coastline. This view is supported by the representation from the Scottish Borders Council. In addition, the Scottish Ministers highlight the SFF comments regarding the selection of the study area.

5.16.4 With regards to the baseline environment, the Developer proposes to rely on a desktop study and not to undertake any site specific surveys. The Scottish Ministers advise that this is not sufficient and primary data must be collected, including engagement with communities and local industries. In addition, this must include the collection of baseline social data which must consider a wider range of potential impacts than described in the Scoping Report. This view is supported by the advice from MAU. The Scottish Ministers also direct the Developer to consider the additional datasets and reports identified by MAU.

5.16.5 The Scottish Ministers agree with the advice of MAU that consideration of social impacts is lacking in the Scoping Report and further the scope of the economic impacts needs to be widened to include other economic impacts. The Scottish Ministers advise that a full socio-economic impact assessment must be included in the EIA Report and in completing this, direct the Developer to the principles outlined in the advice from MAU. Furthermore, the Developer must ensure its economic analysis fully accounts for the direction provided by MAU including the additional areas and considerations identified by them.

- 5.16.6 The Scottish Ministers also advise that the Developer must ensure that the specific impacts of the Proposed Development on established local rural (particularly tourist) businesses and tourism generally are assessed. The Scottish Ministers agree with the Scottish Borders Council advice that consideration should be given to the operational impacts on tourism and recreation and the associated economy. This should take into account major tourist routes such as the A1, Coastal Path and Southern Upland Way and include tourist accommodation and businesses within an enlarged study area.
- 5.16.7 The Scottish Ministers advise that local, regional and national impacts must be clearly described in the EIA Report and furthermore it must be identified whether what is being presented is the 'realistic', 'best case' or 'worst case' scenarios in terms of goods or services to be sourced locally, regionally or nationally and similarly in terms of impacts on employment.
- 5.16.8 With regards to mitigation, the Scottish Ministers at this stage, advise that further work is required in terms of identifying and assessing socio-economic impacts and therefore consideration and identification of potential mitigation measures must be addressed through the Socio-Economic Impact Assessment process within the EIA Report. Again this is a view supported by the advice from MAU. The Scottish Ministers also highlight the Scottish Borders Council representation in relation to assessing the positive and negative economic effects of the Proposed Development.
- 5.16.9 The Scottish Ministers recommend the use of the Developer's proposed 'road map' tool in further considering the potential impacts for socio-economics and tourism, involving relevant stakeholders and local communities within this. The 'road map' tool should be used to ensure agreement on the descriptions of methods, data collection and overall approach to be adopted by the Developer.

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 1994 Habitats Regulations and the 2017 Offshore Habitats Regulations. This assessment must be coordinated with the EIA in accordance with EIA Regulations. In addition, the Scottish Ministers reiterate the advice detailed in paragraph 5.9.8 of the Offshore and Intertidal Ornithology section above recommending early consideration be given by the Developer (on a without prejudice basis to the assessment process outcome) to the undertaking of a parallel process relating to the derogation process under regulation 49 of the 1994 Habitats Regulations and regulation 29 of the 2017 Offshore Habitats 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 Developer must provide confirmation of how this Scoping Opinion and all the subsequent road maps are reflected in the EIA Report.

7. Multi-Stage Consent and Regulatory Approval

7.1 General

- 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 a project 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 an Electricity Act consent 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, are likely to 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 the information provided is within the parameters of what has already been 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.

Signed

Kerry Bell
9 March 2021
Authorised by the Scottish Ministers to sign in that behalf