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## **Marine Scotland - Licensing Operations Team**

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

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

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

**and**

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

**Berwick Bank Offshore Wind Farm**

**4 February 2022**

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## 1. Introduction

### 1.1 Background

- 1.1.1 On 6 October 2021, 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 with regulation 14 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 MW Regulations”), regulation 12 of The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“2017 EW Regulations”) and Schedule 4 of The Marine Works (Environmental Impact Assessment) Regulations 2007 (“2007 MW Regulations”), all collectively referred to as “the EIA Regulations”.
- 1.1.2 A scoping opinion was previously adopted by the Scottish Ministers in respect of Berwick Bank Offshore Wind Farm on 9 March 2021 (“the 2021 Berwick Bank Scoping Opinion”). The project has since been significantly revised. For the avoidance of doubt, this scoping opinion supersedes the 2021 Berwick Bank Scoping Opinion.
- 1.1.3 This scoping opinion is adopted by the Scottish Ministers under the EIA Regulations (“Scoping Opinion”) in response to the Developer’s request and should be read in conjunction with the Scoping Report. The matters contained in the Scoping Report have been carefully considered by the Scottish Ministers and use has been made of professional judgment, based on expert advice from stakeholders and Marine Scotland in-house expertise and experience. This Scoping Opinion identifies the scope of impacts to be addressed and the method of assessment to be used in the Environmental Impact Assessment Report (“EIA Report”) for the Proposed Development.
- 1.1.4 The Scottish Ministers, in adopting this Scoping Opinion, have, in accordance with the EIA Regulations, taken into account the information provided by the Developer, in particular, information in respect of the specific characteristics of the Proposed Development, including its location and technical capacity and its likely impact on the environment. In addition, the Scottish Ministers have taken into account the representations made to them in response to the scoping consultation they have undertaken.
- 1.1.5 This Scoping Opinion is based on the information contained within the Scoping Report and unless stated otherwise does not take into account matters which have been discussed or agreed as part of the Developer’s Road Map process, which has ran in parallel since the submission of the Scoping Report. Within the EIA Report, the Scottish Ministers advise that the Developer must clearly and concisely identify and evidence any part of the assessment which differs from this Scoping Opinion as a result of any agreements which have been reached as part of the Developer’s Road Map process.
- 1.1.6 In accordance with regulation 6(3) of the 2017 MW Regulations, the EIA Report must be based on this Scoping Opinion, failure to adhere to this

Scoping Opinion will likely lead to the Scottish Ministers requiring additional information in accordance with the EIA Regulations. In examining the EIA Report, and any other environmental information, the Scottish Ministers will seek to reach an up to date reasoned conclusion on the significant effects on the environment from the Proposed Development. This reasoned conclusion will be considered as up to date if the Scottish Ministers are satisfied that current knowledge and methods of assessment have been taken account of. For the avoidance of doubt, this Scoping Opinion does not preclude the Scottish Ministers from requiring the Developer to submit additional information in connection with any EIA Report submitted with an application for consent under section 36 (“s.36 consent”) of The Electricity Act 1989 (“the 1989 Act”) and marine licences under The Marine (Scotland) Act 2010 (“the 2010 Act”) and The Marine and Coastal Access Act 2009 (“the 2009 Act”).

- 1.1.7 In the event that the Developer does not submit an application 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.
- 1.1.8 The Scottish Ministers advise that as more than one set of environmental impact assessment regulations apply, the most stringent requirements must be adhered to in terms of, for example, consultation timelines and public notice requirements.
- 1.1.9 The Developer submitted a Habitats Regulations Appraisal (“HRA”) screening report (“HRA Screening Report”) separate from the Scoping Report on 28 October 2021 in relation to the Proposed Development. The Scottish Ministers’ response to the HRA Screening Report is however contained within the relevant receptor chapters of this Scoping Opinion. In addition, the Scottish Ministers advise that the representations from Natural England (“NE”), RSPB Scotland and NatureScot, together with the advice from Marine Scotland Science (“MSS”) on the HRA Screening Report must be fully reviewed and addressed by the Developer. The Scottish Ministers highlight the representation from NE with regard to the need for greater evidence to support the conclusion of no likely significant effect (“LSE”) on English Special Protection Areas (“SPA”) and Special Areas of Conservation (“SAC”) and also consider any indirect effects to coastal processes on English SPA and SACs. The Scottish Ministers advise the Developer to engage with NE on these points.

## **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, 33.5 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 307 wind turbine generators (each comprising a tower section, nacelle and three rotor blades) all associated support structures and foundations;
- Foundation options being considered include: suction caisson jacket foundations and piled jacket foundations.
- Associated support structures and foundations to be chosen from jacket foundation with pin piles and/or suction caisson jacket foundations;
- A maximum rotor blade diameter of no greater than 310 metres (“m”);
- A maximum blade tip height of 355m (above Lowest Astronomical Tide (“LAT”));
- Minimum blade tip height of 37m (above LAT);
- Maximum nacelle height of 200m (above LAT);
- Minimum blade clearance to water surface of at least 37m (above LAT);
- Up to ten offshore substation platforms (“OSP”) and associated support structures and foundations; The OSP topsides will be up to 100m in length, 80m width and be approximately 80m in height above LAT with piled jacket foundations;
- Up to 12 offshore export cables, laying method may include jet trenching, mechanic trenching, and ploughing. 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 two square kilometres (“km<sup>2</sup>”) 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 1,225km of inter-array cabling);

2.2.3 The Proposed Development will have an approximate installed capacity of around 4.1 Gigawatts (“GW”) and will comprise an array area of approximately 1,314 km<sup>2</sup>.

2.2.4 The construction of the Proposed Development is anticipated to take up to four years, as detailed in section 2.4 of the Scoping Report, with the operational lifetime of the Proposed Development to be 35 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.<sup>1</sup> Regulatory approvals will be required for licensable activities including all construction activities, whether as part of the original construction or any subsequent alteration or improvement, any deposit on, or removal from on or under, the seabed of substances, any dredging and deposit, and any use of explosive substances. Any reference to the ‘Proposed Development’ in this Scoping Opinion should be taken, as appropriate, to include all activities in connection with the construction, operation, maintenance (including ‘change-outs’ of components) and decommissioning of the ‘Proposed Development’ for which a regulatory approval will be needed. The Developer should give consideration to all activities related to the Proposed Development which require regulatory approval and ensure that these are applied for as appropriate.

## 2.3 Onshore/Planning

2.3.1 The Scottish Ministers are aware that under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, East Lothian Council issued a scoping opinion dated 1 October 2020 in respect of the associated onshore transmission works. It is essential that the EIA Report concerning these 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.

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<sup>1</sup> Regulatory approval is defined as per regulation 2 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and regulation 2 of The Marine Works (Environmental Impact Assessment) Regulations 2007

## 2.4 The Scottish Ministers' Comments

### *Description of the Proposed Development*

- 2.4.1 Section 2.3 of the Scoping Report indicates that the Developer is considering applying for an additional offshore cable corridor ("Additional Cable") separate from the Proposed Development. In addition, the Developer has since indicated that the Proposed Development only includes the necessary infrastructure to transmit approximately 2.3GW to the national grid. With the Proposed Development predicted to generate 4.1GW the Scottish Ministers view the Additional Cable as a necessary and integral part of the Proposed Development. The Scottish Ministers do not view the Proposed Development as a standalone project from the Additional Cable but rather they are part of a single development. The Scottish Ministers advise therefore that the Additional Cable should be included as part of the application and fully assessed within the EIA for the Proposed Development. In accordance with regulation 6(3) of the 2017 MW Regulations, the EIA Report must be based on the Scoping Opinion. Therefore, the Developer will need to submit an EIA Report (and coinciding application) for the proposed development that includes the Additional Cable Corridor.
- 2.4.2 Section 2.5 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 must 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, the Seagreen Bravo Offshore Wind Farm ("Seagreen Alpha and Bravo") and Seagreen 1A, 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.<sup>2</sup>
- 2.4.3 Section 2.6 of the Scoping Report proposes to provide an overview of the anticipated decommissioning activities for the Proposed Development and an assessment of the potential significant 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.
- 2.4.4 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

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<sup>2</sup> [The Marine Licensing \(Exempted Activities\) \(Scottish Inshore Region\) Order 2011 \(legislation.gov.uk\)](#) and [The Marine Licensing \(Exempted Activities\) \(Scottish Offshore Region\) Order 2011 \(legislation.gov.uk\)](#) .



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. The Scoping Report also identifies that boulders are prevalent at the site of the Proposed Development. The EIA Report must provide the anticipated estimate of boulders to be cleared (including how much uncertainty may be associated with the figures presented). Clear narrative must be provided within the EIA Report to show how this has been estimated prior to the further geophysical and geotechnical surveys being undertaken.

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

2.4.6 Section 2.3.10 of the Scoping Report identifies that further geophysical and geotechnical survey information will inform the requirements for cable location and protection. The Scoping Report indicates that potential cable protection measures will be finalised at the final design stage (post-application). The EIA Report must provide a clear indication of the preferred and most likely route of the cable, an estimate of the anticipated likelihood of suitable burial along that route, the types of cable protection which will be used and the anticipated estimate of locations and volumes of such protection (including how much uncertainty may be associated with the figures presented). Clear narrative must be provided within the EIA Report to show how this has been estimated prior to the further geophysical and geotechnical surveys being undertaken. The EIA Report should also describe the different options for cable location and protection, differences amongst them and provide an assessment of environmental effects that may result between one or the other (or combined) option. The EIA Report should describe the main reasons for selecting the chosen cable route and protection, over the alternatives considered, providing a clear robust justification for the options taken. In considering alternative cable routes the Scottish Ministers advise the Developer to engage with stakeholders including the Scottish Fishermen's Federation ("SFF"), and expect the Developer to detail how the Fisheries Liaison Officer and Fisheries Industry Representative relationship and stakeholder knowledge has been used as part of their consideration of alternatives.

2.4.7 Section 2.3.10 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 the Developer is considering the feasibility of two landfall locations however that one of the two of these will be selected.

The EIA Report must make it clear what the site specific considerations are for the chosen landfall location in this assessment and should ideally include specification of the chosen method.

- 2.4.8 Section 2.4 of the Scoping Report provides generalised detail of the construction phases planned over a period of four years if a s.36 consent and marine licences are granted, including pre-construction surveys and activities. 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. In this regard the Scottish Ministers advise that the EIA Report must include a worst case of high order detonation in terms of impact and mitigation, unless there is robust supporting evidence that can be presented to show the consistent performance of the preferred low order or deflagration method. The Scottish Ministers refer to the Joint SNCB/DEFRA/MS statement – Marine environment: unexploded ordnance clearance in this regard.<sup>3</sup>
- 2.4.9 Section 2.3.6 of the Scoping Report highlights that the Developer is considering two 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 the foundation options considered within the design envelope.
- 2.4.10 Section 2.3.7 of the Scoping Report details the potential scour protection required for foundation structures for wind turbines and substations. The Scottish Ministers highlight the NatureScot December representation on minimising the amount of hard substrate material with particular regard to that deposited within the Firth of Forth Banks Complex nature conservation Marine Protected Area (“ncMPA”). The Scottish Ministers note that section 2.3.4 of the Scoping Report indicates that the Proposed Development is likely to include estimated scour protection of 2 km<sup>2</sup>, however, the scoping report for the original smaller footprint Berwick Bank Offshore Wind Farm estimates more than 4.5 km<sup>2</sup> of scour protection. The Scottish Ministers advise that the EIA Report must, as well as detailing the anticipated locations and volumes of such protection (including how much uncertainty may be associated with the figures presented), provide clear narrative to show how this has been estimated prior to the further geophysical and geotechnical surveys being undertaken. These figures must also include details of the scour protection requirements for individual turbines, foundation types and for cables. The EIA Report should describe the different options for scour protection, differences amongst them and provide an assessment of environmental effects that may result between one or the other (or combined) option.
- 2.4.11 Table 4.1 of the Scoping Report identifies the information required for the description of the Proposed Development, which includes an estimate, by type

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<sup>3</sup> [Marine environment: unexploded ordnance clearance joint interim position statement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/105222/marine-environment-unexploded-ordnance-clearance-joint-interim-position-statement-2021.pdf)

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*

- 2.4.12 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 2.2 of the Scoping Report.
- 2.4.13 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.
- 2.4.14 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") and Development Specification and Layout Plan 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.
- 2.4.15 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*

- 2.4.16 The EIA Regulations require that the EIA Report include ‘a description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the Developer, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects’. The Scottish Ministers acknowledge section 3 of the Developer’s Scoping Report setting out the consideration of alternatives to date, together with the planned activities that are proposed to inform the EIA Report further. The Scottish Ministers advise however that these considerations must include how decommissioning has been taken into account within the design options. The Scottish Ministers advise that this must be based on the presumption of as close to full removal as possible of all infrastructure and assets and should consider the methods and processes of doing so.
- 2.4.17 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. In particular, the Scottish Ministers highlight paragraph 2.4.6 of this Scoping Opinion with regards to the detail to be included in the EIA Report regarding reasonable alternatives for cable location and protection. The Scottish Ministers expect this to comprise a discrete section in the EIA Report that provides details of the reasonable alternatives studied across all aspects of the Proposed Development and the reasoning for the selection of the chosen option(s), including a comparison of the environmental effects.

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

#### **3.1 Introduction**

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

#### **3.2 EIA Scope**

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

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

3.3.1 Any embedded mitigation relied upon for the purposes of the assessment should be clearly and accurately explained in detail within the EIA Report. The likely efficacy of the mitigation proposed should be explained with reference to residual effects. The EIA Report must identify and describe any proposed monitoring of significant adverse effects and how the results of such monitoring would be utilised to inform any necessary remedial actions.

3.3.2 The EIA Report should clearly demonstrate how the Developer has had regard to the mitigation hierarchy, including giving consideration to the avoidance of key receptors. Appendix 2 of the Scoping Report provides a 'commitments register' which summarises the 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 on what they will contain is not considered to be suitable mitigation in itself. The Scottish Ministers also highlight the NatureScot December representation in this regard.

3.3.3 The EIA Report must include a table of mitigation which corresponds with the mitigation identified and discussed within the various chapters of the EIA Report and accounts for the representations and advice attached in Appendix I.

3.3.4 Where potential impacts on the environment have been fully investigated but found to be of little or no significance, it is sufficient to validate that part of the assessment by detailing in the EIA Report, the work that has been undertaken, the results, what impact, if any, has been identified and why it is not significant.

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

- 3.4.1 The EIA Report must include a description and assessment of the likely significant effects deriving from the vulnerability of the Proposed Development to major accidents and disasters. The Developer should make use of appropriate guidance, including the recent Institute of Environmental Management and Assessment (“IEMA”) ‘Major Accidents and Disasters in EIA: A Primer’, to better understand the likelihood of an occurrence and the Proposed Development’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. 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 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)<sup>4</sup> 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.<sup>5</sup>

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 Invasive and Non

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

<sup>5</sup> [Water Bodies Data Sheets \(sepa.org.uk\)](http://www.sepa.org.uk/WaterBodiesDataSheets)

Native Species (“INNS”) settlement and distribution, marine growth and 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. 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 21 October 2021. 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”)
- Esk DSFB
- **Defence Infrastructure Organisation (Ministry of Defence) (“MOD”)**
- Dundee City Council
- **East Lothian Council**
- Eastern England Fish Producer’s Organisation
- English Parish Councils
- Esk DSFB
- Eyemouth Fishery Office
- **Fife Council**
- Fintry Community Council
- Fisheries Management Scotland
- Forth DSFB
- Forth Ports
- Health and Safety Executive
- **Historic Environment Scotland (“HES”)**
- Inshore Fishery Group
- Joint Radio Company
- Letham and District Community Council
- Long Distance Advisory Council
- 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
- **NE**
- **NatureScot (previously known as Scottish Natural Heritage)**
- **Neart na Gaoithe Offshore Wind Limited (“NnG”)**



- North and East Coast Regional Inshore Fishery Group
- North Sea AC
- North Sea Fishermen's Organisation
- **Northern Lighthouse Board ("NLB")**
- **Northumberland Inshore Fisheries and Conservation Authority ("NIFCA")**
- **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
- River Tweed Commission
- **RSPB Scotland**
- **Royal Yachting Association Scotland ("RYA Scotland")**
- **Scottish Borders Council**
- Scottish Canoe Association
- Scottish Creel Fishermen's Federation
- **SEPA**
- **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
- Tay DSFB
- Tealing Community Council
- The Crown Estate Scotland
- The Fish Producers' Organisation
- The Fisheries Liaison with Offshore Wind and Wet Renewables Group
- **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 MSS, the Marine Scotland – Marine Analytical Unit ("MAU") and Transport Scotland ("TS").

## 4.2 Representations Received

4.2.1 From the list above a total of 26 representations were received. Advice was

also provided by MSS, MAU and TS. The purpose of the consultation was to seek representations to aid the Scottish Ministers' consideration of which potential effects should be scoped in or out of the EIA Report.

The Scottish Ministers are satisfied that the requirements for consultation have been met in accordance with the EIA Regulations. The sections below highlight issues which are of particular importance with regards to the EIA Report and the s.36 consent and marine licence applications. The representations and advice received are attached in Appendix I and each must be read in full for detailed requirements from individual consultees. The Scottish Ministers highlight that two separate responses were provided by MSS as part of their advice, each are attached within Appendix I. In addition, two separate representations were received each from NatureScot, Scottish Borders Council and East Lothian Council and again are attached within Appendix I. Where referenced in the Scoping Opinion these are identified by the relevant date.

## **5. Interests to be considered within the EIA Report**

### **5.1 Introduction**

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

### **5.2 Physical Processes**

5.2.1 The Scottish Ministers are broadly content with the data sources identified in Table 6.1, however recommend consideration of the additional data sources identified in the advice from MSS. In addition, the Scottish Ministers recommend that as part of the Developer's Road Map process, there be further discussion and agreement on the relevant datasets to be used for the hydrodynamic model.

5.2.2 The Scottish Ministers agree with the receptors and potential impacts on physical processes detailed and scoped in for assessment during the different phases of the Development within Table 5.1 of the Scoping Report. Further the Scottish Ministers agree that transboundary impacts can be scoped out of any further assessment within the EIA Report.

5.2.3 The Scottish Ministers advise however that the NatureScot December representation regarding sediment scour and physical change must be fully addressed by the Developer in the EIA Report. In addition, the Scottish Ministers highlight sections 2.4.4, 2.4.6 and 2.4.10 of this Scoping Opinion with regards to the detail to be included in the EIA Report in relation to both cable protection and scour protection. The Scottish Ministers also advise that in relation to hydrodynamic and hydro-sedimentary modelling, further discussion on the methodology is required and recommend this is undertaken through the Developer's Road Map process to enable agreement on spatial and temporal scope, nature of outputs including how they are presented and key modelling assumptions. The Scottish Ministers highlight the NatureScot December representation and the MSS December advice in this regard.

5.2.4 The Scottish Ministers advise that full consideration and assessment of the potential impacts upon the Firth of Forth Banks Complex ncMPA must be included in the EIA Report. This must address each of the points raised by NatureScot in this regard, including consideration of the three composite sites within the ncMPA, both alone and in combination, and detailed information and figures on the potential impact to these three composite sites. Furthermore, the Developer must ensure NatureScot's comments on mapping requirements, worst case scenario and cumulative impacts are implemented in the EIA Report.

5.2.5 In relation to mitigation and potential monitoring, the Scottish Ministers agree with the Developer's proposed next steps that this should be discussed further as part of the Road Map process. In particular the Scottish Ministers highlight NatureScot's December representation and the recommendation that serious consideration should be given within the EIA Report to the potential need for measures for equivalent environmental benefit in respect of the potential impacts on the Firth of Forth Banks Complex ncMPA. In addition, the Scottish Ministers highlight the MSS December advice with regards to the consideration of scour and suspended sediment monitoring.

5.2.6 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 the Scottish Environment Protection Agency ("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 Developer's consideration of the potential impacts on airborne noise during the different phases of the Proposed Development are detailed in Table 5.5 of the Scoping Report. The Developer proposes to scope out all of the identified impacts from the assessment within the EIA Report.

5.4.2 The Scottish Ministers agree that the assessment of airborne noise can be scoped out of the EIA Report.

### 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 5.4 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 advise that based on the implementation of designed in measures detailed in section 5.4.5 of the Scoping Report the assessment on air quality can be scoped out of the EIA Report.

## 5.6 Climate Effects Assessment

- 5.6.1 The Scottish Ministers broadly agree with the proposed methods and impacts identified in the climate effects assessment. The Scottish Ministers advise however that the MSS December advice regarding to the evaluation of the loss of carbon sequestered into the sediment within the footprint of the Proposed Development must be fully addressed in the EIA Report.

## 5.7 Benthic Subtidal and Intertidal Ecology

- 5.7.1 The Scottish Ministers are content with the Proposed Development study area. In respect of the regional study area, the Scottish Ministers advise, for the avoidance of doubt, that it should include each of the 3 neighbouring consented wind farms and their export cables, as well as the Seagreen 1A export cable corridor and the areas between each of these sites. This view is supported by NatureScot's December representation and the MSS December advice. The Scottish Ministers note however that the site specific benthic survey report was not included in the Scoping Report and therefore the further advice below is provided on a without prejudice basis.
- 5.7.2 With regards to the characterisation of the baseline, the Scottish Ministers are broadly content with the data sources, desktop study information and the benthic subtidal ecology validation survey. The Scottish Ministers however recommend consideration of the additional studies identified in the MSS December advice on defining quality of reef and the identification of stony reef habitats. In addition, the Scottish Ministers highlight the MSS December advice in relation to clarification of the listing for each feature and also the recent designation of 'kelp forest habitat' by OSPAR in this region.
- 5.7.3 Within Table 6.3 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 NatureScot December representation and MSS December advice regarding temporary or long term habitat loss or disturbance, INNS, colonisation of hard structures and impact to benthic invertebrates due to Electromagnetic Fields ("EMF"), must be fully addressed by the Developer and each of the recommendations implemented. In addition, the Scottish Ministers highlight sections 2.4.4, 2.4.6 and 2.4.10 of this Scoping Opinion with regards to the detail to be included in the EIA Report in relation to both cable protection and scour protection.
- 5.7.4 In addition to the impacts identified in Table 6.3, the Scottish Ministers advise that changes in prey species availability and whole ecosystem effects; changes in hydrodynamics and sediment movement on the benthic communities; the impact on the sediment and benthic communities from the clearance of potential UXOs from the site of the Proposed Development; impacts on habitat loss and disturbance in the intertidal and nearshore due to either HDD at the entry and exit points or open cut trenching at the construction phase; movement of re-suspended sediment at the cable landfall site during the construction phase; and INNS at the operation phase, are all

scoped in and must be considered and assessed in the EIA Report. These views are supported by the MSS December Advice, whose comments on these points must be fully addressed within the EIA Report.

- 5.7.5 The Scottish Ministers also agree with the potential impacts to be scoped out of assessment within Table 6.4 of the Scoping Report. This view is supported by the NatureScot December representation and MSS December advice. The Scottish Ministers advise however that with regard to the impacts from the release of sediment bound contaminants, this view is dependent on submission of satisfactory site specific sediment chemistry sampling results. The Scottish Ministers will review these results with regards to the contaminant levels and the sampling programme undertaken.
- 5.7.6 With regards to key species and habitats the Scottish Ministers advise that the Developer must implement the advice contained in both the NatureScot December representation and the MSS December advice with regards to the consideration and assessment of the Firth of Forth Banks Complex ncMPA, Barns Ness Coast Site of Special Scientific Interest, Annex I habitats and Priority Marine Features ("PMF"). The Scottish Ministers advise that the EIA Report must include an assessment quantifying the likely impacts to key PMF and consideration of whether this could lead to a significant impact on the national status of the PMFs affected. This must include PMFs outwith the Firth of Forth Banks Complex ncMPA.
- 5.7.7 With regards to the MPA assessment the Scottish Ministers advise that the each of the points raised in the NatureScot December representation and MSS December advice on this must be fully addressed in the EIA Report. The Scottish Ministers highlight the importance of a clear assessment of the specific impacts from the Proposed Development in itself and cumulatively against all the designated features of the Firth of Forth Banks Complex ncMPA.
- 5.7.8 In relation to cumulative impacts the Scottish Ministers advise that the EIA Report must consider the impacts of the Proposed Development in relation to Seagreen based on the likely worst-case scenario for benthic impact. The Scottish Ministers further advise that the NatureScot December representation must be fully addressed in this regard and highlight NatureScot's advice regarding the assessment approach and format.
- 5.7.9 In respect of monitoring, the Scottish Ministers highlight the advice provided in the NatureScot December representation regarding the potential need for strategic monitoring regarding hard structure colonisation and change in community structure and local species.
- 5.7.10 Finally, with regards to the HRA Screening Report, the Scottish Ministers agree that the Berwickshire and Northumberland Coast SAC is screened in for the impacts identified. This is a view supported by the NatureScot December representation and the MSS December advice.

## 5.8 Fish and Shellfish Ecology

- 5.8.1 The Scottish Ministers are content with the two study areas proposed by the Developer. This view is supported by the NatureScot December representation and the MSS December 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 5.8.13 to 5.8.18.
- 5.8.2 With regards to the characterisation of the baseline, the Scottish Ministers advise that the Developer must fully address the NatureScot December representation and MSS December Advice. This must include consideration of all the additional studies, reports and data sources detailed throughout the NatureScot December representation and MSS December advice. The Scottish Ministers highlight the MSS December advice that the 2020 landings data is now available but note that it should be carefully interpreted due to the impacts of Covid-19 on the commercial fishing industry.
- 5.8.3 In addition, the Scottish Ministers advise that the Developer must fully address the MSS December advice with regards to undertaking a further review of sandeel spawning grounds; further consideration of the overlap of the Proposed Development with nephrops grounds; and consideration of the temporal overlap of fish spawning periods with the timeline for the construction of the Proposed Development, In addition, the Scottish Ministers highlight the comments from the MSS December advice on the importance of the Developer's review of herring spawning and nursery grounds and recommend that this review and the findings are presented as part of the Developer's Road Map process.
- 5.8.4 With regard to key species the Scottish Ministers highlight the NatureScot December representation and advise this must be fully considered and actioned. This includes considering the ecological importance and PMF status of the species detailed in Appendix 8, Table 8.3 of the Scoping Report. With regards to shellfish, the Scottish Ministers advise that NatureScot's December representation must be fully addressed. This includes assessment of the indirect effects on freshwater pearl mussel and also the detail expected in respect of the assessment of impacts on ocean quahog (including cumulative impacts) to be included within EIA Report. In this regard, the Scottish Ministers also refer to the MSS December advice in relation to the benthic section of the Scoping Report which provides further detail on the expected assessment of ocean quahog.
- 5.8.5 Within Table 6.5 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 NatureScot December representation, NIFCA and SFF representations together with the MSS December advice regarding habitat loss or disturbance, EMF from subsea electromagnetic cabling, underwater noise, change in prey species availability, increased suspended sediments, must be fully addressed by the Developer.

- 5.8.6 With regard 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.
- 5.8.7 In relation to underwater noise, the Scottish Ministers advise that the EIA Report must fully assess the impacts on herring, including modelling as detailed in the MSS December advice. Furthermore, the EIA Report must include consideration of appropriate mitigation, including the use of sound abatement measures and the avoidance of loud, impulsive noise generating activities during important peak spawning periods. 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. This view is supported by the NatureScot December representation. Additionally, disturbance from construction related noisy activities must be assessed in the EIA Report depending on the foundation type or installation method. With regard to UXO clearance, the Scottish Ministers advise that this must include a worst case of high order detonation in terms of impact and mitigation, unless there is robust supporting evidence that can be presented to show the consistent performance of the preferred low order or deflagration method.
- 5.8.8 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 marine invertebrates such as lobster, nephrops and crabs whilst taking into account recent scientific evidence. The Scottish Ministers also advise that the Developer must provide evidence for either predicted or known EMF emissions from their cables to predict the range of EMF emissions from the cable. This range can then be considered against background levels of geomagnetism.
- 5.8.9 The Scottish Ministers agree with the potential impacts to be scoped out of assessment within Table 6.6 of the Scoping Report. This view is supported by the NatureScot December representation and MSS December advice.
- 5.8.10 The Scottish Ministers advise that the Turbot Bank ncMPA can be screened out from assessment. This view is supported by the NatureScot December representation and the MSS December advice. With regard to the Firth of Forth Banks Complex ncMPA however, the Scottish Ministers highlight NatureScot's December representation regarding the consideration of impacts to the offshore subtidal sands and gravels feature of the ncMPA as spawning habitat and furthermore the importance of a clear assessment of the specific impacts of the Proposed Development in itself and cumulatively against all designated features of the ncMPA, including ocean quahog.
- 5.8.11 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 consented 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.

- 5.8.12 In relation to mitigation, the Scottish Ministers advise that the proposed mitigation in Table 6.5 of the Scoping Report applies to marine fish as well as diadromous fish. Furthermore, the Scottish Ministers highlight the advice provided in the NatureScot December representation and the MSS December advice regarding the potential need for strategic monitoring.
- 5.8.13 With regard to diadromous fish the Scottish Ministers highlight the NatureScot December and MSS December advice with regard to the baseline characterisation and advise that these must be addressed in the EIA Report. For the avoidance of doubt, the Scottish Ministers advise should sparling, Allis shad and twaite shad not be considered for further assessment, the justification for this, based on available evidence, must be provided in the EIA Report. The Scottish Ministers advise that the timing of fish migration is a crucial element of the data that will require careful consideration in the impact assessment. Mitigation that may be necessary and when it should be applied in respect of fish migration should also be carefully considered. All NatureScot advice on this topic must be considered and addressed in the EIA Report and all the studies, reports and data detailed throughout the NatureScot December representation and MSS December advice should be included in the EIA Report. In addition, the Scottish Ministers highlight the MSS December advice regarding the need to bring in a range of available information in the absence of site specific surveys and noting that epibenthic trawls provide little information on salmon and sea trout, as well as the NatureScot December representation concerning the utilisation of accurate and reflective language as regards diadromous fish species.
- 5.8.14 With regards to key species and habitats the Scottish Ministers advise that the Developer must fully implement the both the NatureScot December representation and MSS December advice with regards to the SAC sites for diadromous fish, including identification of sites, potential impact mechanisms and determination of likelihood of significant effect. In relation to those diadromous fish which are also PMFs, the Scottish Ministers advise that their PMF status and associated importance should be acknowledged in the EIA Report and draw attention to the NatureScot December representation which contains further detail and references regarding these species and associated migration routes.
- 5.8.15 With regard to Table 6.5 of the Scoping Report, the Scottish Ministers agree with the impacts to be scoped in for diadromous fish however, advise that the NatureScot December representation and the MSS December advice, regarding underwater noise, change in prey species availability, EMF (including potential effects on migrating diadromous fish which are navigating using geomagnetic cues), increased suspended sediments and colonisation of hard structures must be fully addressed by the Developer. The Scottish

Ministers agree with the potential impacts to be scoped out of assessment within Table 6.6 of the Scoping Report.

- 5.8.16 With regard to mitigation of the potential impacts on diadromous fish, the Scottish Ministers advise that the NatureScot December representation and MSS December advice must be fully addressed in the EIA Report. In particular the Scottish Ministers highlight the comments on the potential ineffectiveness of ramp-up and soft-start piling and the need to instead consider the timings for carrying out works. The Scottish Ministers also draw attention to the NatureScot December representation and MSS December advice regarding the potential need for strategic monitoring.
- 5.8.17 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 consented wind farms in the Forth and Tay area, in relation to diadromous fish. This view is supported by the NatureScot December representation. In addition, the Scottish Ministers highlight the MSS December advice regarding consideration of cross border impacts from the Proposed Development.
- 5.8.18 Finally, with regard to the HRA Screening Report, the Scottish Ministers agree with the list of sites identified within Table 4.2, however advise that the reference to the River Teith SAC should be amended to include Atlantic salmon as a feature. With regards to impact pathways and the determination of LSE, the Scottish Ministers agree with the conclusions detailed in Tables 5.4. to 5.9 of the HRA Screening Report. In addition, however the Scottish Ministers advise that suspended sediment concentrations and sediment deposition must also be screened in during the construction and decommissioning phases for each of the sites and qualifying features identified in Tables 5.4 to 5.9. This is a view supported by the NatureScot December representation and the MSS December advice. Furthermore, the Scottish Ministers direct the Developer to the NatureScot December representation in respect of the HRA Screening Report and advise that all the points raised in respect of indirect impacts upon freshwater pearl mussels and underwater noise impacts must be fully addressed.

## 5.9 **Marine Mammals**

- 5.9.1 With regards to the study areas, the Scottish Ministers are content with the list of species to be included in the assessment. The Scottish Ministers advise however that for species with management units extending over a very large scale, these species must be assessed against the whole management unit population and in addition, must be assessed at a regional scale based on SCANS III Block R. The Scottish Ministers highlight the MSS December advice in this regard and note this has also been a point of discussion during the Developer's Road Map process. The Scottish Ministers are broadly content with the data sources and desktop study information listed in Appendix 9 of the Scoping Report, however advise that the additional sources of information identified in the NatureScot December representation and the MSS December advice must be fully considered by the Developer. In addition, the Scottish Ministers highlight both the NatureScot December representation

and the MSS December advice with regard to the use of IAMMWG (2021) and advise that further discussion is required if agreement has not already been reached via the Developer's Road Map process.

- 5.9.2 With regard to bottlenose dolphins, the Scottish Ministers direct the Developer to the NatureScot December representation and the MSS December advice on the most appropriate abundance estimate to use for the assessment. In relation to the distribution of bottlenose dolphins, the Scottish Ministers refer to the MSS December advice to use two different distributions of density to account for the range expansion and habitat preferences of the east coast dolphin population. The Scottish Ministers highlight that this has also been a continued point of discussion during the Developer's Road Map process, including extended correspondence with the Developer, NS and MSS.
- 5.9.3 In relation to seals, the Scottish Ministers advise of the potential connectivity with the export cable corridor route and both the Isle of May SAC and Berwickshire and North Northumberland Coast SAC. In addition, the Scottish Ministers highlight NatureScot's December representation recommending to use of the Firth of Forth area for the Isle of May SAC and the Firth of Forth plus the Farne Islands for Berwickshire and North Northumberland Coast SAC. With regard NatureScot's recommendation to use the Carter et al. (2020) habitat preference maps for the prediction of the at sea seal abundance and distribution, the Scottish Ministers highlight the concerns raised in the MSS December advice in relation to using the current scalars. MSS have requested advice on the use of these scalars and in the meantime have advised the scalars should be used with caution, noting they may require to be updated. This was discussed further during the Developer's Road Map process and the assessment should reflect this further discussion.
- 5.9.4 Within Table 6.8 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 potential impacts scoped in however advise that the NatureScot December representation and MSS December advice regarding UXO clearance, pre-construction surveys, disturbance from vessel use and other construction activities, change in prey species availability must also be fully considered and assessed in the EIA Report.
- 5.9.5 With regard to UXO clearance, the Scottish Ministers highlight the MSS December advice regarding the potential for low order UXO clearance methods to still generate noise and therefore the risk of injury and disturbance must be considered and assessed in the EIA Report. In addition, the Scottish Ministers advise that that the EIA Report must include a worst case of high order detonation in terms of impact and mitigation, unless there is robust supporting evidence that can be presented to show the consistent performance of the preferred low order or deflagration method. The Scottish Ministers refer to the Joint SNCB/DEFRA/MS statement – Marine environment: unexploded ordnance clearance in this regard.

- 5.9.6 The Scottish Ministers advise that the effects of disturbance from vessel use and other construction activities must be considered and assessed separately. The Scottish Ministers highlight NatureScot's December representation and notes their previous advice on this matter.
- 5.9.7 With regard to prey species availability the Scottish Ministers advise more consideration is required to ensure impacts to key species and their habitats are considered across all of the phases of the Proposed Development and in combination with the neighbouring consented wind farms in the Forth and Tay area. The Scottish Ministers highlight the NatureScot December representation and MSS December advice on benthic interests and fish and shellfish as well in this regard.
- 5.9.8 In relation to disturbance from pre-construction surveys, the Scottish Ministers highlight the MSS December advice with regard to the potential for injury as well. The Scottish Ministers advise that a quantitative assessment using appropriate underwater noise modelling should be undertaken for pre-construction surveys.
- 5.9.9 With regard to the proposed approach to impact assessment the Scottish Ministers advise that the NatureScot December representation and MSS December advice must be fully considered, including noise abatement methods and technologies, as well as the recommendation to assess underwater noise generated from UXO quantitatively.
- 5.9.10 The Scottish Ministers highlight the NatureScot December representation regarding conversion factors ("CF") and also the discussions which have taken place during the Developer's Road Map Process with both MSS and NatureScot. The Scottish Ministers advise that a range of CFs of 1%, 4% and 10% must be adopted by the Developer as part of the assessment in the EIA Report. The Developer should provide justification for which of the results are being relied on within the assessment to inform appropriate mitigation. The Scottish Ministers highlight paragraph 1.1.6 above and note that the EIA Report must be based on this Scoping Opinion.
- 5.9.11 The Scottish Ministers advise that the interim Population Consequences of Disturbance model must be used to assess the population level effects for bottlenose dolphin, harbour porpoise, minke whale and grey seal. Confirmation should be sought on its use for harbour seal through the Developer's Road Map process.
- 5.9.12 The Scottish Ministers agree with the cumulative effects identified in the Scoping Report but advise that further discussion and agreement as part of the Developer's Road Map process is required. Noting that an agreed approach to cumulative impact assessment for marine mammals for HRA, EIA and European Protected Species licensing is also still required. The Scottish Ministers refer to NatureScot's December representation and MSS December advice in this regard and advise that they must be fully considered.
- 5.9.13 The Scottish Ministers agree that the potential impacts to marine mammals during the different phases of the Proposed Development detailed within Table

6.9 of the Scoping Report can be scoped out from further assessment within the EIA Report. This view is supported by the MSS December advice.

- 5.9.14 With regards to mitigation, the Scottish Ministers advise that a Vessel Management Plan, Piling Strategy and Marine Mammal Mitigation Protocol will be key components of the Proposed Development and refer to the guidance provided in section 3.3 of this Scoping Opinion regarding the necessary detail required within the EIA Report. The Scottish Ministers direct the Developer further to the MSS December advice and NatureScot December representation in this regard. In addition, the Scottish Ministers also highlight the advice from MSS with regard to 'low order techniques' and also the indication that a Marine Mammal Mitigation Protocol will likely be required for any UXO clearance.
- 5.9.15 The Scottish Ministers are content with the preliminary screening of the Southern Trench ncMPA and confirm the site can now be screened out. The Scottish Ministers are content that no further marine mammal ncMPAs are to be included. This is a view supported by the NatureScot December representation and MSS December advice.
- 5.9.16 With regard to the HRA Screening Report the Scottish Ministers refer to the NatureScot December representation and NE representation together with the MSS December advice and advise that the Developer must fully review and address these. The Scottish Ministers agree all of the SACs and their qualifying features as detailed in Table 4.3 of the HRA Screening Report, which are located in Scottish waters, should be screened in. In addition, the Scottish Ministers highlight NatureScot's December representation with regard to the revision of the conservation objectives for the seal SACs. In addition, the Scottish Ministers highlight NatureScot's December representation and the MSS December advice with regard to updating the baseline information provided in the HRA Screening Report. The Scottish Ministers advise that this must include consideration of the discussions as part of the Developer's Road Map process and the extended correspondence amongst the Developer, NatureScot and MSS on bottlenose dolphins. The Scottish Ministers advise that the Southern North Sea SAC is screened in but advise the Developer to engage with NE on this point.
- 5.9.17 With regards to the potential impact pathways detailed in the HRA Screening Report, the Scottish Ministers advise that the risk assessment for underwater noise from UXO clearance, must consider the worst case scenario as detailed further above at paragraph 5.8.5. In addition, the Scottish Ministers agree with NatureScot's December representation regarding underwater noise from vessels and the requirement for further consideration of changes in prey availability including direct impact of habitat loss or prey disturbance, impact of the colonisation of hard structures, effects on fish populations from habitat disturbance and EMF effects on changes in prey availability. The Scottish Ministers advise that the points raised by NatureScot must be fully addressed.
- 5.9.18 The Scottish Ministers agree with the approach outlined in Tables 5.10 to 5.15 of the HRA Screening Report however advise that Table 5.14 must include underwater noise impacts for bottlenose dolphin from vessel activity. This

must be assessed across all phases of the Proposed Development and in particular, with respect to the export cable route and landfall location. In addition, the Scottish Ministers advise that further discussion is required on the methods to be used to undertake quantitative assessments of impacts to the SAC populations that are to be included in the HRA.

## 5.10 Offshore and Intertidal Ornithology

- 5.10.1 The Scottish Ministers are broadly content with the proposed study areas and this view is supported by the NatureScot December representation and RSPB Scotland representation together with the MSS December advice. The Scottish Ministers advise however with regard to the non-breeding season, where a regional assessment is required for relevant species, the representation from NatureScot must be actioned by the Developer.
- 5.10.2 With regard to baseline characterisation the Scottish Ministers are content with the data sources and desktop study information provided in the Scoping Report. The Scottish Ministers advise however that modelled abundance produced by MRSea should be provided and highlight the NatureScot December representation and MSS December advice in this regard. If it can be shown that MRSea cannot function effectively with this dataset then design based estimates must be used. The Scottish Ministers however highlight the MSS December advice that the use of design based estimates may necessitate a higher level of precaution in the assessment to account for the higher levels of uncertainty. The Scottish Ministers also highlight the MSS December advice with regards to the inclusion of a summary the GPS tracking data available within the application. In addition, the Scottish Ministers advise that further discussion and agreement on the characterisation of the cable corridor is required as part of the Developer's Road Map process. This view is supported by the NatureScot December representation.
- 5.10.3 Within Table 6.10 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 impacts scoped in, however advise that impacts to key prey species of birds and of the supporting habitat for these prey throughout all phases of the Proposed Development are also scoped in and must be fully considered and assessed in the EIA Report. In addition, the Scottish Ministers advise that potential impacts from cable installation activities and ongoing maintenance and repair operations, particularly with respect of vessel activity are scoped in and must be fully considered and assessed in the EIA Report and also within the HRA. This view is supported by the NatureScot December representation and the MSS December advice. The Scottish Ministers also highlight the representation from RSPB Scotland with regard to displacement and disturbance during operation of the Proposed Development and the potential risks to guillemot in light of the 2021 autumn mass mortality and advise this should be considered further as part of the Developer's Road Map process.
- 5.10.4 With regards to the proposed assessment methods, the Scottish Ministers advise that the Developer must fully address the MSS December advice and

the NatureScot December representation together with the RSPB Scotland and NE representations. In relation to seasonality, displacement and mortality rates the Scottish Ministers advise that the NatureScot December representation recommendations must be implemented and this is a view supported by the MSS December advice. The Scottish Ministers advise that with regard to mortality rates, outputs must be presented for both the lower and upper bounds. In addition, with regard to displacement and barrier effects the Scottish Ministers advise that the SeabORD tool should be used for the relevant species. The Scottish Ministers have considered the scale of the Proposed Development and the sensitivity of the outer Forth for seabird species and do not consider the matrix approach to be sufficient for most of the affected species. The Scottish Ministers advise that, taking into account current knowledge and methods of assessment, the use of SeabORD is likely to be required to enable them to reach a reasoned conclusion on the significant effects of the Proposed Development on the environment. The Scottish Ministers highlight NatureScot's December representation and the MSS December advice on this point together with the subsequent feedback NatureScot and MSS have provided since the 4<sup>th</sup> Road Map meeting with the Developer. The Scottish Ministers highlight paragraph 1.1.6 above and note that the EIA Report must be based on this Scoping Opinion.

- 5.10.5 With regards to gannet displacement and barrier effects the Scottish Ministers highlight the NatureScot December representation and the MSS December advice and advise that they must be fully considered by the Developer and suggest further discussion and agreement as part of the Developer's Road Map process.
- 5.10.6 In relation to flight height data, the Scottish Ministers highlight the MSS December advice but also note the subsequent feedback NatureScot and MSS have provided on the draft BTO flight height report, which did not form part of the Scoping Report. The Scottish Ministers advise that generic flight heights from Johnston et al. (2014 with the corrigendum) can be used for the primary collision risk modelling, however this should be supported with site specific data collected from the boat based surveys for a sample species, like kittiwake.
- 5.10.7 The Scottish Ministers are content with the use of the deterministic Band model for the primary assessment of collision risk with stochastic collision risk model outputs being presented for context using the avoidance rates ("AR") from Bowgen and Cook (2018). The Scottish Ministers advise using ARs following the joint SNCB guidance (2014) however recommend further discussion and agreement as part of the Developer's Road Map process in respect of the ARs for gannet and kittiwake, the use of standard deviations and the use of appropriate Nocturnal Activity rates. The Scottish Ministers advise the Developer to fully consider the RSPB Scotland representation and NatureScot December representation together with the MSS December advice in this regard.
- 5.10.8 With regards to potential collision risk to migratory water birds and seabirds on passage, the Scottish Ministers advise these must be assessed with reference to site specific survey results and the Marine Scotland

commissioned update to the 2014 report on 'strategic assessment of collision risk of Scottish offshore wind farms to migrating birds' ("2014 Report"). If the updated report is not available in time for inclusion within the EIA Report then the Scottish Ministers advise that the SPA migratory waterbird species relevant to the Proposed Development which are not considered within the 2014 Report, must be assessed on a qualitative basis. The Scottish Ministers advise however that further assessment may be required following publication of the new strategic assessment report for species originally omitted from the 2014 Report, and possibly for species included in the 2014 Report where conclusions in the new report differ substantially. The Scottish Ministers advise that if further assessment is required following the publication of the updated report this could trigger additional information as defined in the EIA Regulations.

- 5.10.9 In relation to apportioning methods the Scottish Ministers highlight the NatureScot December representation and the MSS December advice together with the representation from NE in response to the HRA Screening Report and advise that these must all be fully considered by the Developer. The Scottish Ministers note however the representation from RSPB Scotland and suggest further discussion and agreement as part of the Developer's Road Map process.
- 5.10.10 With regard to Population Viability Analysis ("PVA") the Scottish Ministers agree with the use of the NE PVA tool, however advise that further discussion and agreement on the threshold for running a PVA, should take place as part of the Developer's Road Map process. In addition, the Scottish Ministers advise that further discussion and agreement on an ecosystem approach is required. The Scottish Ministers highlight the representation of RSPB Scotland and the NatureScot December representation together with the MSS December advice in this regard.
- 5.10.11 In relation to cumulative impacts the Scottish Ministers highlight the NatureScot December representation and MSS December advice and advise that they must be fully considered by the Developer. In addition, the Scottish Ministers advise that it is reasonable for the cumulative assessment for the Proposed Development to include the Inch Cape Offshore Wind Farm s.36 consent granted in 2019. The Inch Cape Offshore Wind Farm s.36 consent granted in 2014 is not required to be included, as to date there has not been a request to extend the commencement of the development within the Inch Cape Offshore Wind Farm 2014 consent beyond October 2021.
- 5.10.12 The Scottish Ministers agree with the Developer's proposal to scope out pollution impacts during all phases of the Proposed Development subject to the submission or reference to pollution prevention plans as appropriate. This view is supported by the representation of RSPB Scotland and MSS December advice.
- 5.10.13 With regard to mitigation the Scottish Ministers highlight the representation from RSPB Scotland and the MSS December advice. The Scottish Ministers encourage refining the design envelope to be able to consider the realistic worst case scenario. Noting the Developer has indicated that refinement of



the Proposed Development footprint is a type of mitigation, the Scottish Ministers recommend further clarity on the data and analysis this was based on. In addition, the Scottish Ministers note that the 2km gap between Seagreen Alpha and Bravo and the Proposed Development may not be sufficient to meaningfully reduce barrier effects.

- 5.10.14 Finally, with regard to the HRA Screening Report, the Scottish Ministers agree that all the features of the Outer Firth of Forth St Andrews Bay Complex SPA should be screened in. In addition, the Scottish Ministers highlight NatureScot's December representation with regard to the updated conservation objectives and Conservation Management Advice for all European sites. The Scottish Ministers highlight the NatureScot December representation and MSS December advice and advise that when establishing connectivity for breeding seabird SPAs, by-sea distances must be used instead of straight-line distance. The Scottish Ministers confirm however that the sites and species listed in paragraph 137 of the HRA Screening Report are screened out. In addition, the Scottish Ministers advise that Auskerry SPA, Marwick Head SPA, Priest Islands SPA and Ramna Stacks and Gruney SPA are all screened out and highlight the NatureScot December representation and MSS December advice in this regard. The Scottish Ministers confirm that Farne Islands SPA is screened in and advise that all of the species detailed in the representation of NE should also be screened in.
- 5.10.15 In relation to paragraph 142, section 4.4.2 of the HRA Screening Report the Scottish Ministers agree the species listed are screened out, except where they are qualifying features of the Outer Firth of Forth and St Andrews Bay Complex SPA. The Scottish Ministers advise however, with reference to paragraph 143 of HRA Screening Report, that any UK SPA contributing to biologically defined minimum population scales for the non-breeding season assessment must be screened in and taken forward for determination of likely significant effect. The Scottish Ministers highlight the NatureScot December representation and the MSS December advice in this regard. In addition, the Scottish Ministers advise that common guillemot from the Flamborough and Filey Coast SPA is screened in for potential impacts during the non-breeding season and in relation to this refer to the NE representation. The Scottish Ministers agree with the 17 SPAs for migratory water bird features detailed in Table 4.5 of the HRA Screening Report are screened in.
- 5.10.16 With regard to impact pathways and determination of LSE, the Scottish Ministers refer to the NatureScot December representation and MSS December advice which must be fully implemented. As indicated the sites and species referred to above should be brought for assessment. In addition, the Scottish Ministers refer to paragraph 5.9.8 of this Scoping Opinion and advise that potential collision risk to migratory water birds and seabirds on passage should be assessed with reference to site specific survey results and the Marine Scotland commissioned update to the 2014 Report. If the updated report is not available in time for inclusion within the Developer's application then the Scottish Ministers advise that the SPA migratory waterbird species relevant to the Proposed Development which are not considered within the 2014 Report, must be assessed on a qualitative basis. The Scottish Ministers advise however that further assessment may be required following publication

of the new strategic assessment report for species originally omitted from the 2014 Report, and possibly for species included in the 2014 Report. In addition, the Scottish Ministers advise that water clarity/suspended sediment during construction and decommissioning requires to be considered as an impact pathway.

- 5.10.17 With regard to the LSE matrices detailed in the HRA Screening Report the Scottish Ministers direct the Developer to the NatureScot December representation and advise that all the points raised must be implemented. This includes assessing direct habitat loss across all phases, including decommissioning for all qualifying features of the Outer Firth of Forth and St Andrews Bay Complex SPA. In addition, geese and migratory water bird qualifying features should be screened in for collision and barrier to movement and breeding and non-breeding gannet should also be screened in for barrier to movement. The Scottish Ministers also highlight the MSS December advice in this regard.
- 5.10.18 The Scottish Ministers also highlight the NatureScot December representation and RSPB Scotland representation together with the MSS December 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 have considered the scale of the Proposed Development, the sensitivity of the location and the uncertainty around both the predicted and actual impacts for the neighbouring consented wind farms in the Forth and Tay and therefore consider it is important that the best available tools and evidence are used to inform the EIA. In addition, the Scottish Ministers will continue to engage (on a without prejudice basis to the assessment process outcome) with the parallel process being undertaken by the Developer relating to the derogation process under regulation 49 of The Conservation (Natural Habitats, &c.) Regulations 1994 (“1994 Habitats Regulations”) and regulation 29 of The Conservation of Offshore Marine Habitats and Species Regulations 2017 Habitats Regulations (“2017 Offshore Habitats Regulations”).

## 5.11 Commercial Fisheries

- 5.11.1 With regards to the available information proposed by the Developer to be used to inform the commercial fisheries baseline assessment, the Scottish Ministers highlight the MSS December advice that the 2020 landings data is now available but should be carefully interpreted due to the impacts of Covid-19 on the commercial fishing industry. The Scottish Ministers recommend that all the data and guidance detailed in the MSS December advice and MSS January advice, including the MSS good practice guidance for assessing fisheries displacement once published, are fully considered in the EIA Report.
- 5.11.2 Within Table 7.1 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 representation from the SFF and the MSS December advice and MSS January advice must also be fully considered and addressed by the Developer.

- 5.11.3 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 Banks 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 January advice supporting this view must be fully implemented by the Developer.
- 5.11.4 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 December advice and MSS January advice.
- 5.11.5 With regards to the Developer's proposed approach to assessing the potential effects on safety issues for fishing vessels, the Scottish Ministers advise that these effects must be considered and assessed separately from the Shipping and Navigation assessment relative to section 7.2 of the Scoping Report. This must include consideration of the risk of snagging fishing gear. The Scottish Ministers highlight the MSS January advice in this regard.
- 5.11.6 In addition to the effects identified in Table 7.1 of the Scoping Report, the Scottish Ministers advise more detailed information for the decommissioning phase is required, in particular in relation to the potential safety hazard disused infrastructure left in the marine environment poses to commercial fishing. The Scottish Ministers highlight the MSS January advice in this regard.
- 5.11.7 With regards to cumulative impacts, the Scottish Ministers advise that the cumulative impact assessment should discuss the potential for fisheries management measures within MPA and direct the Developer to the map layers for current fisheries management layers referenced in the MSS December advice.
- 5.11.8 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 additional fisheries stakeholders listed in SFF's representation in this regard.

## 5.12 Shipping and Navigation

- 5.12.1 With regards to the proposed study areas, the Scottish Ministers highlight the representation of the CoS and advise that the concerns raised are addressed prior to the submission of the EIA Report. This should include agreement on the extent of the shipping and navigation study area, with particular regard to the buffer on the array northern and western boundaries.
- 5.12.2 In relation to the baseline datasets identified in the Scoping Report, the Scottish Ministers draw attention to the CoS representation advising that vessel traffic data will need detailed examination and scenario modelling and that full consideration is given to the common movement of rigs, semi-sub and non-regular traffic. The Scottish Ministers recommend that further engagement by the Developer with the CoS and note the next steps detailed in section 7.2.9 of the Scoping Report in this regard. The Scottish Ministers advise however that the points raised by CoS must be considered in the EIA Report.
- 5.12.3 Within Table 7.3 of the Scoping Report the Developer details the potential impacts to shipping and navigation 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 the MCA, NLB, CoS and RYA Scotland must be fully addressed by the Developer. In addition, the Scottish Ministers advise that defence maritime navigational interests must be considered and assessed in the EIA Report and direct the Developer to the MOD representation in this regard.
- 5.12.4 In relation to the proposed embedded mitigation measures, the Scottish Ministers highlight the representations from the MCA and CoS which must be fully addressed by the Developer.
- 5.12.5 With regard to potential cumulative effects, the Scottish Ministers highlight the representations from the MCA, NLB, CoS and RYA Scotland, regarding the likely cumulative and in combination effects on shipping routes and the cumulative impacts of other windfarms and offshore developments in close proximity. The Scottish Ministers advise that these representations must be fully addressed in the EIA Report by the Developer.

## 5.13 Aviation, Military and Communications

- 5.13.1 With regards to the baseline characterisation, the Scottish Ministers advise that the Developer must consider the Exercise Areas highlighted in the MOD representation and also the Local Development Plan policy highlighted in the Scottish Borders Council December representation.
- 5.13.2 Within Table 7.6 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 MOD and NATS must be fully addressed by the Developer. In addition, the Scottish Ministers note the representation from BT.

- 5.13.3 Within Table 7.7 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 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. Whilst the CAA have not provided any representation, the Scottish Ministers advise that the Developer should seek to engage with the CAA prior to the submission of the EIA Report.
- 5.13.4 The Scottish Ministers highlight the representation by NATS which predicts that the Proposed Development is likely to generate an unacceptable level of clutter to its Radar infrastructure. The Scottish Ministers advise that the Developer validates the position in relation to the generation of radar clutter and explore how this could be mitigated in the EIA Report. NATS has also advised that the Proposed Development will likely have significant adverse impacts on the Air Traffic Control at both Prestwick Centre and Aberdeen Offshore. The Scottish Ministers recommend the Developer engage further with NATS on these points and advise that these impacts must be assessed, including mitigation if necessary, in the EIA Report.
- 5.13.5 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. For the avoidance of doubt, the Scottish Ministers advise that impacts on Primary Surveillance Radars at Leuchars Station and Spadeadam Deadwater Fell and the Air Defence Radars at Royal Air Force ("RAF") Brizlee Wood and RAF Buchan and the requirement for mitigation, must be fully assessed in the EIA Report. The Scottish Ministers also draw attention to the MOD comments highlighting the extent of MOD Naval Practice and Exercise Areas and the UK Military Low Flying system which have not been specifically considered and should be addressed in the EIA Report.

## 5.14 Marine Archaeology

- 5.14.1 The Scottish Ministers are content with regard to the study area and baseline information. This is a view supported by the representations from Fife Council, HES and the Scottish Borders Council December representation.
- 5.14.2 Within Table 7.9 of the Scoping Report, the Developer details the potential impacts on Marine Archaeology during the different phases of the Proposed Development which it proposes to scope out of assessment from the EIA Report. The Scottish Ministers are content, that based on the measures detailed in Table 7.8 of the Scoping Report and providing the

recommendations contained in the Fife Council representation regarding multibeam scanning and making survey results available for archaeological record are implemented, then all the identified impacts can be scoped out. This view supported by the representations from HES and Fife Council and Scottish Borders Council January representation.

- 5.14.3 With regard to the designed in measures the Scottish Ministers advise that the method statements and procedures referred to in the HES representation and Scottish Borders Council December representation will require to be submitted to the Scottish Ministers for approval as part of the marine licence application process.

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

- 5.15.1 With regard to the zone of theoretical visibility (“ZTV”) study area, the Scottish Ministers refer to the NatureScot, East Lothian Council and Scottish Borders Council December representations together with the Northumberland County Council representation. The Scottish Ministers highlight the concerns raised by both East Lothian Council and Scottish Borders Council and advise that further discussions and agreement on an acceptable study area are required. Notwithstanding this, the Scottish Ministers advise that the Developer must include the additional designated areas identified within the proposed ZTV by East Lothian Council.
- 5.15.2 In relation to the baseline information the Scottish Ministers highlight NatureScot’s December representation with regard to the inclusion of all relevant offshore wind farms in the assessment and baseline mapping and advise that this must be fully addressed by the Developer. Furthermore, the Scottish Ministers advise that the updated management plans and further guidance documents highlighted by East Lothian Council must be included as baseline data sources in the Developer’s assessment. The Scottish Ministers highlight East Lothian Council’s December representation with regard to the Forth and Tay Offshore Windfarm Developer Group Study and the categorisation of the East Lothian Council coast condition and advise that this is fully considered and addressed by the Developer.
- 5.15.3 With regard viewpoints the Scottish Ministers highlight the NatureScot December representation together with the NatureScot January representation and advise that the recommendations with regard to assessment of the Isle of May viewpoint, acceptable visibility conditions for viewpoint photography and night time viewpoint guidance must be fully addressed in the EIA Report. In addition, the Scottish advise that the additional viewpoint from Pencraig Brae must be included in the EIA Report and refer to the East Lothian Council December representation in this regard. The Scottish Ministers also advise that the additional viewpoints referred to in the Scottish Borders Council December representation must also be included but note that exact viewpoints and appropriate visual representation will not be agreed by the Scottish Borders Council until they receive an updated ZTV at 1:50,000. The Scottish Ministers also highlight the Scottish Borders Council request regarding paper copies.

- 5.15.4 Within Table 7.10 of the Scoping Report, the Developer details the potential impacts on seascape, landscape and visual resources during the different phases of the Proposed Development, which it proposes to scope in for assessment within the EIA Report. The Scottish Ministers are content the methods described are sufficient to inform a robust assessment. The Scottish Ministers are broadly content with the impacts identified as being scoped in however highlight the caveat by East Lothian Council in their December representation due to the size of the study area.
- 5.15.5 The Scottish Ministers are broadly content with the potential impacts on seascape, landscape and visual resources within Table 7.11 during the different phases of the Proposed Development to be scoped out of the assessment for EIA. The Scottish Ministers disagree however with the proposal to scope out the impact of the Proposed Development lighting on seascape character at night during all phases of the Proposed Development, and advise that this must be assessed in the EIA Report. The Scottish Ministers highlight the NatureScot and East Lothian Council December representations in this regard. Furthermore, the Scottish Ministers disagree with scoping out areas outwith the ZTV at this stage on basis of the December representations from East Lothian Council and Scottish Borders Council in regards to the definition of the ZTV.
- 5.15.6 In relation to the proposed approach to the EIA Report, the Scottish Ministers advise that the Developer must provide all graphic and visualisation material in hard copy format to the correct sizes, in colour, as per the NatureScot Visualisation Guidance<sup>6</sup>. This includes but it not limited to, ZTV information, spatial graphics, wirelines and photomontages and cumulative information. The Scottish Ministers direct the Developer further to the NatureScot December representation and requirements in this regard.
- 5.15.7 The Scottish Ministers advise that with regards to the designed in measures detailed at section 7.5.4 of the Scoping Report, the EIA Report should include and provide narrative on cumulative design issues of the Proposed Development in combination with the neighbouring consented wind farms in the Forth and Tay area in addition to the Northumberland Coast Area of Outstanding Natural Beauty as a key design objective. This view is supported by the NatureScot December representation. In addition, the Scottish Ministers advise that the Scottish Borders Council December representation regarding cumulative effects must be fully addressed.

## 5.16 Cultural Heritage

- 5.16.1 The Scottish Ministers agree with the Proposed Development study area and the proposed approach to gathering baseline information. This view is supported by the Northumberland County Council, Fife Council representations together with the Scottish Borders Council December representation and the East Lothian Council January representation.

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<sup>6</sup> <https://www.nature.scot/doc/visual-representation-wind-farms-guidance>

- 5.16.2 With regard to the potential receptors identified in Table 7.13 the Scottish Ministers advise that Dunbar Castle and North Berwick Law, Crosslaw Radar Station and St Abb's Head (with listed building lighthouse, foghorn and lighthouse keeper's cottages) should also be included for assessment. The Scottish Ministers highlight the Scottish Borders Council December representation and East Lothian Council January representation in this regard and advise that the Developer that these must be fully addressed in the EIA Report.
- 5.16.3 The Scottish Ministers agree with the potential impacts on cultural heritage during the different phases of the Proposed Development scoped in within Table 7.14 of the Scoping Report. In addition, the Scottish Ministers are broadly content with the potential impacts to be scoped out of the assessment within Table 7.15 of the Scoping Report however, advise the Developer to address the East Lothian Council January representation with regard to the assessment of B and C listed buildings.

## 5.17 Infrastructure and Other Users

The Scottish Ministers highlight the advice from TS and advise that the Developer must provide confirmation in the EIA Report of the potential impact of any increase in Heavy Goods Vehicles ("HGV") on the trunk road network if it is to be used in relation to 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.

- 5.17.1 Within Table 7.16 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 broadly agree with the impacts detailed and scoped in however, advise that the advice from TS must be fully addressed by the Developer. In particular the Scottish Ministers highlight the comments from TS and Scottish Borders Council 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. In addition, the Scottish Ministers note the representation of the RYA Scotland.
- 5.17.2 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 7.17 of the Scoping Report can be scoped out from further assessment within the EIA Report.
- 5.17.3 With regards to the designed in measures described at section 7.7.5 of the Scoping Report, the Scottish Ministers are content that these provide a suitable means for managing and mitigating the potential effects of the



Proposed Development. In addition, the Scottish Ministers highlight the representation from NnG recommending early engagement with them.

## 5.18 Offshore Socio-economics and Tourism

- 5.18.1 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 in the MAU Advice and the Visit Scotland representation.
- 5.18.2 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 note the Scottish Borders Council December representation confirming it is content with the study area.
- 5.18.3 The Scottish Ministers advise that the Developer should undertake a full socio-economic impact assessment and in completing this, direct the Developer to the principles outlined in the advice from MAU. The Scottish Ministers direct the Developer to the representation from Visit Scotland and the SFF together with the MAU advice and the MSS January 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. The Scottish Ministers also advise that impacts to the sale of fish and the supply chain must be considered and assessed in the EIA Report, as supported by the representation from SFF and MSS January advice. These impacts should be considered along with the wider assessment of socioeconomic implications recommended by the MAU.
- 5.18.4 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.

## **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 5.10.18 of the Offshore and Intertidal Ornithology section above regarding consideration of 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 the Developer must provide confirmation of how this Scoping Opinion is reflected in the EIA Report.

## 7. Multi-Stage Consent and Regulatory Approval

### 7.1 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 works may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision, if those effects are not identified or identifiable at the time of the principle decision, assessment must be undertaken at the subsequent stage.
- 7.1.2 The definition in the 2017 EW Regulations is as follows (the definition in the 2017 MW Regulations provides for the same but in relation to “regulatory approvals”): *“application for multi-stage consent” means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun*”.
- 7.1.3 A s.36 consent or marine licences, if granted, by the Scottish Ministers for the Proposed Development, may have several conditions attached requiring approvals etc. which fall under this definition, for example the approval of a CMS. When making an application for multi-stage consent or regulatory approval the Developer must satisfy the Scottish Ministers that no significant effects have been identified in addition to those already assessed in the EIA Report.
- 7.1.4 If during the consideration of information provided in support of an application for multi-stage consent or regulatory approval the Scottish Ministers consider that the development may have significant environmental effects which have not previously been identified in the EIA Report (perhaps due to revised construction methods or updated survey information), then information on such effects and their impacts will be required. This information will fall to be dealt with as additional information under the EIA Regulations, and procedures for consultation, public participation, public notice and decision notice of additional information will apply.

Signed

Kerry Bell  
4 February 2022  
Authorised by the Scottish Ministers to sign in that behalf

**Appendix I: Consultation Representations & Advice**

*Please refer to separate document provided alongside the Scoping Opinion.*

## **Appendix II: Gap Analysis**

*Please refer to separate document provided alongside the Scoping Opinion.*