GREEN VOLT

Chapter 3
Policy and Legislative Context

Offshore EIA Report: Volume 1

Revision history

Revision	Date	Description	Prepared	Checked	Approved
1	14/12/2021	First draft	SF (Royal HaskoningDHV)	AC (Royal HaskoningDHV)	VC (Flotation Energy)
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Appendices (Volume 2)

Acronyms

Acronym	Description
CBD	Convention on Biological Diversity
CCS	Carbon Capture and Storage
CfD	Contracts for Difference
COP	United Nations Climate Change Conference of the Parties
DECC	Department of Energy and Climate Change
EC	European Commission
EEA	European Economic Area
EEC	European Economic Community
EGPS	Electricity Generation Policy Statement
EIA	Environmental Impact Assessment
EMR	Electricity Market Reform
EPS	European Protected Species
ESS	Environmental Standards Scotland
EU	European Union
GES	Good Environmental Status
GHG	Green House Gas
GW	Gigawatt
HRA	Habitat Regulations Appraisal
INTOG	Innovation and Targeted Oil and Gas
MCAA	Marine and Coastal Access Act

MHWS	Mean High Water Springs
MPA	Marine Protected Area
MPS	Marine Policy Statement
MSFD	Marine Strategy Framework Directive
MS-LOT	Marine Scotland Licensing Operations Team
MW	Megawatt
NMP	National Marine Plan
NPS	National Planning Statement
NPS EN-1	The Overarching NPS for Energy
NPS EN-3	The NPS for Renewable Energy Infrastructure
NPS EN-5	The NPS for Electricity Networks Infrastructure
OGUK	Oil & Gas UK
OREI	Offshore Renewable Energy Infrastructure
OSP	Offshore Substation Platform
OWIG	Offshore Wind Industry Group
PAC	Pre-Application Consultation
REZ	Renewable Energy Zone
s.36	Section 36
SAC	Special Area of Conservation
SMP-OWE	Sectoral Marine Plan for Offshore wind Energy
SPA	Special Protection Area
SPP	Scottish Planning Policy

UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UXO	Unexploded Ordnance

Glossary

Term	Description
Applicant	Green Volt Offshore Windfarm Ltd.
Buzzard	Buzzard Platform Complex
Buzzard Export Cable Corridor	The area in which the export cables will be laid, from the perimeter of the Windfarm Site to Buzzard Platform Complex.
Green Volt Offshore Windfarm	Offshore windfarm including associated onshore and offshore infrastructure development (Combined On and Offshore Green Volt Projects)
Horizontal Directional Drilling	Mechanism for installation of export cable at landfall
Inter-array cables	Cables which link the wind turbines to each other and the offshore substation platform.
Landfall Export Cable Corridor	The area in which the export cables will be laid, from the perimeter of the Windfarm Site to landfall
Mean High Water Springs	At its highest and 'Neaps' or 'Neap tides' when the tidal range is at its lowest. The height of Mean High Water Springs (MHWS) is the average throughout the year, of two successive high waters, during a 24-hour period in each month when the range of the tide is at its greatest (Spring tides).
Moorings	Mechanism by which wind turbine generators are fixed to the seabed.
NorthConnect Parallel Export Cable Corridor Option	Landfall Export Cable Corridor between NorthConnect Parallel Landfall and point of separation from St Fergus South Export Cable Corridor Option
NorthConnect Parallel Landfall	Southern landfall option where the offshore export cables come ashore
Offshore Development Area	Encompasses i) Windfarm Site, including offshore substation platform ii) Offshore Export Cable Corridor to Landfall, iii) Export Cable Corridor to Buzzard Platform Complex.

Offshore export cables	The cables which would bring electricity from the offshore substation platform to the Landfall or to the Buzzard Platform Complex.
Offshore Export Cable Corridor	The proposed offshore area in which the export cables will be laid, from offshore substation to landfall or to the Buzzard Platform Complex.
Offshore infrastructure	All of the offshore infrastructure, including wind turbine generators, offshore substation platform and all inter-array and export cables.
Offshore substation platform	A fixed structure located within the Windfarm Site, containing electrical equipment to aggregate the power from the wind turbine generators and convert it into a more suitable form for export to shore.
Onshore Export Cable Corridor	The proposed onshore area in which the export cables will be laid, from landfall to the onshore substation.
Project	Green Volt Offshore Windfarm project as a whole, including associated onshore and offshore infrastructure development
Safety zones	An area around a structure or vessel which must be avoided.
St Fergus South Export Cable Corridor Option	Landfall Export Cable Corridor between St Fergus South Landfall and point of separation from NorthConnect Parallel Export Cable Corridor Option
St Fergus South Landfall	Northern landfall option where the offshore export cables come ashore.
Windfarm Site	The area within which the wind turbine generators, offshore substation platform and inter-array cables will be present.

CHAPTER 3: POLICY AND LEGISLATIVE CONTEXT

3.1 Introduction

1. This chapter of the **Offshore Environmental Impact Assessment (EIA) Report** presents a review of the policy context and legislative framework underpinning the need for the Project (in this instance the Project refers to the offshore elements of the Green Volt Offshore Windfarm only, up to Mean High Water Springs (MHWS)) (see **Chapter 2: Need for the Project**) and the **Offshore EIA Report**. Further policies and legislation specific to each EIA topic are outlined in the relevant technical chapters (**Chapter 7 to 20**) of this **Offshore EIA Report**. Onshore works associated with the Project are seeking consent through the Town and Country Planning (EIA) (Scotland) Regulations 2017 and relevant onshore policy and legislation are considered in the **Onshore EIA Report** for this Project.

3.2 Requirement for Environmental Impact Assessment

2. The EIA process provides a systematic tool for assessing and examining the potentially significant effects of a development on the physical, biological and human environment. It enables the identification of mitigation and management measures to ensure that development is sustainable and allows for opportunities for beneficial effects to be identified. It also gives consultees the opportunity to participate in decision-making procedures through the consultation process.
3. The EIA legislation[1] relevant to Scotland's inshore and offshore waters, and applicable to the offshore scope of the Project are as follows:
    - The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 as amended by The Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) (applies to all applications for Section 36 (s.36) consent in Scottish waters out to 200 nm);
    - The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (Scotland) (applies to applications that require an EIA for a marine licence from 0-12 nm), as amended by The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019; and
    - The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (applies to applications that require an EIA, for a marine licence from 12-200 nm).
4. The EIA Directive (85/337/EEC as amended by 97/11/EC, 2003/35/EC and 2009/31/EC, codified by 2011/92/EU and further amended by 2014/52/EU), as implemented into Scottish Law by the above regulations, requires that an EIA must be carried out in support of an application for development consent for certain types of major projects which are likely to have the potential to give rise to significant environmental effects. Offshore wind farms are listed in Annex II of the EIA directive as "*installations for the harnessing of wind power for energy production (wind farms)*". Annex II projects require an EIA to be undertaken where the project is "likely to have significant effects on the environment by virtue of factors including their nature, size or location".
5. Furthermore, as stated in Schedule 4, section 6 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (Scottish Government, 2017):

    'The description of the likely significant effects on the factors specified in regulation 5(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the works. This description should take into account the environmental protection objectives established at Union or Member

[1] *This legislation implements The European Commission (EC) EIA Directive (85/337/EEC as amended by 97/11/EC, 2003/35/EC and 2009/31/EC, codified by 2011/92/EU and further amended by 2014/52/EU) and has been amended following Brexit to ensure they continue to be effective and maintain the same standards of protection now that the UK is no longer part of the European Union (EU).*

State level which are relevant to the works including in particular those established under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(1) and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds'.

6. In line with this requirement, a description of likely significant transboundary and cumulative effects is provided in each technical chapter of the **Offshore EIA Report** (where relevant) and summarised in **Chapter 20: Transboundary and Cumulative Impacts**.
7. The United Nations Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context (referred to as the Espoo Convention) requires that assessments are extended across borders between Parties of the Convention when a planned activity may cause significant adverse transboundary impacts (United Nations Economic Commission for Europe, 2017).
8. Since 1 January 2021, European Union (EU) law no longer applied in the UK. Fundamentally, the European Union (Withdrawal) Bill (leading to the European Union (Withdrawal Agreement) Act 2020) was designed to keep in place all EU-derived domestic legislation and to incorporate direct EU legislation such as EU environmental regulations into domestic law. In Scotland, the UK Withdrawal from the EU (Continuity) (Scotland) Act 2021 received royal assent in January 2021, which provides for Scottish Law to stay aligned to future EU law despite the withdrawal of the UK from the EU in 2020. Through this Act, Environmental Standards Scotland (ESS), a public sector body, was set up as a non-ministerial office, independent of Scottish Government, and accountable to the Scottish Parliament. ESS was set up to ensure environmental laws and standards are adhered to in Scotland, replacing the European Union's scrutiny and enforcement role after Brexit.
9. In November 2021, the Environment Act 2021 ("**the Environment Act**") was passed into law, providing a framework for post-EU Exit environmental governance. The Environment Act makes provisions for a range of matters, including environmental targets, plans and policies for improving the natural environment, and a range of measures in relation to nature and biodiversity, water, and air quality. Most of the Bill applies in England only. However, there are also significant provisions in the Bill which apply to Scotland, Wales and Northern Ireland. A number of the UK-wide provisions create delegated powers where areas of devolved environmental policy are expected to be regulated at a UK-wide level with the consent of Scottish Ministers. There are also a number of areas in the Bill that extend to Scotland by virtue of their being reserved areas.
10. Due to the size and scale of the Project, Green Volt Offshore Windfarm Ltd (the Applicant) have prepared an **Offshore EIA Report** in support of this application for development consent for works below MHWS.
11. The main aim of this **Offshore EIA Report** is to ensure that the consent granting authority (Scottish Ministers in this context) makes their decision in full knowledge of any impacts on the offshore environment.

3.3 Climate Change and Energy

3.3.1 International Context

3.3.1.1 United Nations Framework Convention on Climate Change

12. The UK is a signatory to the Kyoto Protocol, which is linked to the United Nations Framework Convention on Climate Change (UNFCCC) and provides commitments for the State parties to reduce greenhouse gas (GHG) emissions. The Kyoto Protocol was adopted in Kyoto, Japan on 11 December 1997 and entered into force on 16 February 2005. The Protocol was amended at Doha, Qatar on 8 December 2012 and entered into force on 31 December 2020. Its commitments are reflected in The Climate Change (Scotland) Act 2009, which replicates both The Climate Change Act 2008 commitments and includes interim targets (**Section 3.3.2.1**).

13. At the Paris climate change conference (Conference of Parties; COP21) in December 2018, 195 countries, the UK included, adopted the global climate deal (The Paris Agreement). The Paris Agreement sets out the global action plan of limiting global temperature increase to below 2°C, while pursuing efforts to limit the increase to 1.5°C above pre-industrial average temperature (UNFCCC, 2016a).

14. COP26 took place in November 2021 in Glasgow where parties concluded that with current climate policies the world was not on track to meet the long-term temperature goal set out in the Paris Agreement, with a 2.7ºC increase predicted following COP26 (Climate Change Committee, 2021).

15. Most recently, COP 27 took place in November 2022 in Sharm el-Sheikh, where countries agreed to return each year to strengthen commitments on cutting greenhouse gas emissions to attempt to strengthen their commitments to pursue efforts to keep the increase in in temperature below 1.5 ºC.

3.3.2 National Context

3.3.2.1 The Climate Change (Scotland) Act 2009

16. The Climate Change (Scotland) Act 2009 is legislation specifically implemented to reduce the greenhouse gas emissions in Scotland (UK Government, 2009). The Climate Change (Scotland) Act implemented initially in 2009 required an interim reduction of greenhouse gas emissions by 42% and an 80% reduction target for 2050. The initial Act also required that the Scottish Ministers set annual targets, in secondary legislation, from 2010 to 2050. To satisfy this requirement, the Climate Change (Annual Targets) (Scotland) Order 2010 outlined the first set of annual emissions reduction targets for 2010-2022. Following this period, The Climate Change (Annual Targets) (Scotland) Order 2011 outlines the targets for 2023-2027. Following EU Exit, accountability under EU Regulations, including the Renewable Energy Directive[2], no longer apply to the UK as a withdrawn Member State. The Climate Change (Scotland) Act 2009 and The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (**Section 3.3.2.2**) include for Scotland's commitments to reducing GHG emissions.

[2] *The Renewable Energy Directive (2009/28/EC) has two key targets:*
- *a reduction of 20% in greenhouse gases by 2020 (below 1990 levels); and*
- *20% of the total European Union (EU) energy (electricity, heat and fuel) consumption to come from renewable sources by 2020.*

The 2009 directive was revised in December 2018,(2018/2001/EU) and is legally binding since June 2021. It includes a new binding renewable energy target for 2030 of at least 32%, with a clause for a possible upwards revision by 2023. In July 2021, the Commission proposed a revision of the directive (COM/2021/557 final) with an increased 40% target as part of the package to deliver on the European Green Deal. In May 2022, the Commission proposed in its Communication on the REPowerEU plan (COM/2022/230 final) to further increase this target to 45% by 2030.

3.3.2.2 The Climate Change (Emissions Reductions Targets) (Scotland) Act 2019

17. The Scottish Government is committed to ensuring secure, reliable and affordable energy supplies within the context of long-term decarbonisation of energy generation. Continued growth of the renewable energy sector in Scotland is an essential feature of the future clean energy system and a potential key driver of economic growth.

18. The Scottish Government has set a range of targets and ambitions to cut greenhouse gas emissions and to generate more energy from renewable sources. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 commits the Scottish Government to reach net zero emissions of all greenhouse gases by 2045. It also sets out interim targets of to cut emissions by 75% by 2030 and 90% by 2040, against the 1990 baseline. Additionally, The Scottish Government has set a target to generate 50% of Scotland's overall energy consumption from renewable sources by 2030.

3.3.2.3 The Energy Act 2004

19. Separate to the Energy Act 2013, the Energy Act 2004 (amended by the Scotland Act 2016) sets out a comprehensive statutory scheme for the establishment of safety zones around Offshore Renewable Energy Installations (OREI) and the requirement of a decommissioning programme for offshore renewable energy installations.

20. Changes to the Energy Act, brought about by the Scotland Act 2016, provide that the Scottish Ministers, rather than the UK Government Ministers, will exercise functions in relation to the decommissioning of renewable energy installations which are located either wholly in Scottish Waters or in Scottish parts of a Renewable Energy Zone (REZ). Decommissioning programmes ensure the reinstatement of sites and ensure the availability of adequate funds to undertake decommissioning.

3.3.2.4 The Climate Change Act 2008

21. The Climate Change Act 2008 (as amended by The Climate Change Act 2008 (2050 Target Amendment) Order 2019) sets out the framework for the UK to transition to a low-carbon economy. It places a duty on the UK government to ensure their net carbon account and GHG emissions are reduced by 100% by 2050 relative to 1990 levels (net zero), as underpinned by international agreements and commitments.

3.3.2.5 The Energy Act 2013

22. The Electricity Market Reform (EMR) policy and Energy Act 2013 introduced the Contracts for Difference (CfD) allocation framework with the aim of providing long term revenue stabilisation for new low carbon energy initiatives, replacing the previous Renewable Obligation Certificate system. The CfD scheme is the government's main mechanism for supporting low-carbon electricity generation. The auction framework drives developers to deliver competitive projects at a Low-level Energy Cost, thereby reducing the subsidy required with the aim of ultimately lowering the cost to the consumer.

3.3.2.6 The Electricity Generation Policy

23. The Electricity Generation Policy Statement 2013 (EGPS) examines the way in which Scotland generates electricity and considers the changes which will be necessary to meet the targets that the Scottish Government has established (Scottish Government, 2013). The Scottish Government's policy on electricity generation is that Scotland's generation mix should deliver:

    - a secure source of electricity supply;
    - at an affordable cost to consumers;
    - which can be largely decarbonised by 2030; and
    - which achieves the greatest possible economic benefit and competitive advantage for Scotland, including opportunities for community ownership and community benefits.

3.3.2.7 Scotland's Energy Strategy

24. In 2017, the Scottish government published Scotland's Energy Strategy: The Future of Energy in Scotland which set a vision for how the energy system in Scotland would look in 2050. That vision was to see: *"A flourishing, competitive, local and national energy sector, delivering secure, affordable, clean energy for Scotland's households, communities and businesses."*

25. Since the publication of the 2017 strategy, the Scottish Government has committed to achieving ambitious targets of net zero greenhouse gas emissions by 2045 and a 75% reduction by 2030 (Scottish Government 2020). The 2017 strategy involves supplying 50% of Scotland's energy requirements from renewable sources and increasing energy productivity by 30% across the Scottish economy by 2030. The latest report by the Climate Change Committee (CCC, 2022) identifies that emissions in 2021 rose to some extent after the COVID-19 pandemic but remain 10% below 2019 levels.

3.3.2.8 Scotland's Offshore Wind Policy Statement

26. Offshore wind is a large-scale technology with the potential to play a pivotal role in Scotland's energy system over the coming decades. The development of technologies such as floating wind, which offer scope for development in deeper water, have significant potential to contribute offshore wind energy supply at affordable prices. Floating technology is particularly well suited to the deeper water abundant around Scotland and in the vicinity of oil and gas infrastructure.

27. The UK Government's Industrial Strategy rightly points to the achievements of the offshore wind industry, and the potential that it represents. The Offshore Wind Sector Deal (2019) celebrated these achievements and set numerous targets for the sector including an aim to generate 30 gigawatts (GW) by 2030. This has since been increased to 50 GW by 2030 by the Spring 2022 UK Government Energy Security Strategy. Marine Scotland's Offshore Wind Policy Statement confirms the Scottish Government's intent to see offshore wind play a key role in decarbonisation and our net zero commitment and suggests as much as 11 GW could be delivered by 2030 in Scottish waters alone.

3.3.2.9 Scotland's Offshore Wind Route Map

28. The Offshore Wind Industry Group (OWIG) (consisting of both industry, government and public sector bodies) published Scotland's Offshore Wind Route Map in 2010, presenting an approach to identifying opportunities, challenges and priority recommendations for the offshore wind industry (Scottish Government, 2010). The ambition of the offshore wind industry was highlighted, "with 25% of Europe's offshore wind potential, the manufacturing, supply chain, job creation and training opportunities present Scotland with huge scope for sustainable economic growth".

29. The route map identifies that offshore wind will make a significant contribution to meeting Scotland's renewable energy target of 50% of Scotland's electricity consumption coming from renewable sources by 2030 with a fully decarbonised energy system by 2050.

3.3.2.10 British Energy Security Strategy

The British Energy Security Strategy was published in April 2022, and sets out how Great Britain will accelerate homegrown power for greater energy independence, in response to energy pressures and the cost of living crisis caused by the COVID-19 pandemic and Russia's invasion of Ukraine in 2022. The strategy seeks to accelerate the deployment of wind, new nuclear, solar and hydrogen, whilst supporting the production of domestic oil and gas in the nearer term – which could see 95% of electricity by 2030 being low carbon.

3.4 Electrification of the Oil and Gas Industry

North Sea Transition Deal

30. As part of the UK's commitment to net zero (**Section 3.3.2.2** the oil and gas industry through Oil and Gas UK (OGUK) has committed to the North Sea Transition Deal (OGUK, 2021), which calls for significant reductions in the emissions caused by oil and gas production. For "scope 1" emissions, which relate to those from the process of oil and gas extraction, the UK oil and gas industry has committed to reductions of:

    - 10% CO2 reduction by 2025
    - 25% CO2 reduction by 2027
    - 50% CO2 reduction by 2030

Innovation and Targeted Oil and Gas (INTOG) Leasing Round

31. In August 2021, Crown Estate Scotland announced the Innovation and Targeted Oil and Gas (INTOG) leasing round, which took place in 2022 with results due early 2023. INTOG has been designed to allow developers to apply for the rights to build offshore wind farms specifically for the purpose of providing low carbon electricity to power oil and gas installations and help decarbonise the sector. INTOG expects to support the delivery of smaller (<100 megawatts (MW)) innovation projects and specifically targets larger (>100 MW) projects that seek to support the decarbonisation of the oil and gas sector, such as the Green Volt Offshore Windfarm.

32. The Applicant has applied for a site lease in accordance with the INTOG process. At the time of preparing this **Offshore EIA Report**, the Project boundary falls entirely within the proposed area of search identified by the INTOG process. Projects that progress through the planning process will still require the appropriate marine licences and s.36 consent under the Marine (Scotland) Act 2010 and the Electricity Act 1989, respectively.

3.5 Marine Planning

3.5.1 UK Context

33. Within the UK, there are two key policy statements for marine planning: The National Policy Statements (NPS), designated under the Planning Act 2008, and the Marine Policy Statement (MPS), published in March 2011.

34. NPS were designated under the Planning Act 2008. They describe the national case and establish the need for certain types of infrastructure development including energy. These NPS are a relevant consideration for Scottish offshore energy installations; however, Scottish Ministers are responsible for planning decisions.

35. The UK-wide MPS was published in March 2011, under Section 44 of the Marine and Coastal Access Act 2009 (MCAA), in order to provide a framework for marine spatial planning, specifically for the preparation of Marine Plans and to ensure that marine resources are used in a sustainable way (HM Government, 2011). The MPS was jointly adopted by Scottish Ministers, the Secretary of State, Welsh Ministers and the Department of the Environment Northern Ireland. The MPS confirms that in examining and determining energy infrastructure applications, the following must be considered (all of which are satisfied by the Project):

    - the national level of need for energy infrastructure;
    - the positive wider environmental, societal, and economic benefits of low carbon electricity generation; and

- the potential for inward investment supporting the objective of developing the UK's low carbon manufacturing capability.

36. Whilst the NPS is specific to England and Wales, the MPS, however, confirms that Scotland should refer to National Planning Frameworks 3 and 4. The MCAA requires all public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area to do so in accordance with the MPS and the relevant Marine Plans.

3.5.2 Scottish Context

3.5.2.1 National Marine Plan (NMP)

37. Scotland's National Marine Plan (NMP) was adopted and published in 2015 (Scottish Government 2015). The NMP, in accordance with the UK MPS, sets out a single statutory planning framework for all marine activity out to 200 nm in Scottish waters. It provides a structure which embeds environmental protection in decision making, improving consistency of decision making and providing greater certainty for developers and users of the sea. This **Offshore EIA Report** has taken consideration of the Plan, in particular Chapter 6, 9, 11 and 14, considering Sea Fisheries, Oil and Gas, Marine Renewable Energy and Submarine Cables respectively.

38. The core objectives and marine planning policies in relation to offshore wind developments seek to:

- ensure sustainable development of offshore wind in the most suitable locations;
- maximise economic benefits from offshore wind by securing a competitive local supply chain in Scotland;
- align marine and terrestrial planning and efficient consenting and licensing processes including, but not limited to, data sharing, engagement and timings, where possible;
- align marine and terrestrial transmission grid planning and development in Scottish waters;
- contribute to achieving the renewable consumption targets; and
- ensure co-ordinated government and industry-wide monitoring.

3.5.2.2 National Planning Framework 3

39. The National Planning Framework 3 (NPF3) (Scottish Government, 2014a) was developed in 2014 and presents plans for development and investment in infrastructure by the Scottish Government over the next 25 years. The NPF3 is supported by the Scottish Planning Policy (SPP) (Scottish Government, 2014b). This includes a series of topics, including renewable energy policies, and acknowledges Scotland's offshore renewable energy resources. With regard to the offshore wind and renewable energy sector, NPF3 presents a key vision in Scotland for the enhancement of the low carbon economy and to be a world leader in low carbon energy generation, both onshore and offshore.

40. A revised draft version of Scotland's fourth National Planning Framework was published on 8th November 2022. The strategy sets out Scotland's spatial principles, regional priorities, national developments and national planning policy, playing a key role in the delivering on the United Nations Sustainable Development Goals.

41. Further details are provided in each technical chapter (**Chapters 7 to 20**).

3.5.2.3 Sectoral Marine Plans

42. In October 2020, the Scottish Government published a new sectoral marine plan for offshore wind energy (SMP-OWE) in Scottish inshore and offshore waters out to the Exclusive Economic Zone limit. This Plan provides opportunities for development within deeper waters, a consideration not factored into the earlier Blue Seas Green Energy 2011 Plan. It identifies 15 Plan Options, split across 4 regions and recognises the pivotal role offshore wind energy has in Scotland's energy system. The SMP-OWE further identified a possible need to re-examine the planning process to allow more targeted projects to progress with the specific focus of seeking to electrify oil and gas infrastructure.

43. Marine Scotland intends to have a single SMP for offshore wind, incorporating SMP-OWE (including the expansion of ScotWind from the 2020 SMP-OWE) and the INTOG SMP. The two SMP assessments will be combined in spring 2023 for subsequent consultation with SMP adoption in December 2023. As INTOG planning process is specifically targeting oil and gas decarbonisation, it will provide unique opportunities to further deliver a Just Transition and assist the oil and gas sector in meeting the commitments of the North Sea Transition Deal. The Initial Plan Framework for Offshore Wind Energy for INTOG was published in August 2021 and was updated in February 2022. Crown Estate Scotland's INTOG leasing round has been developed in alignment with the framework.

3.5.2.4 Marine Development

44. Other than in relation to certain specified matters (such as oil and gas industry activities), the Scottish Ministers have executively devolved powers over marine planning, marine licensing and nature conservation in the offshore marine region (12-200 nm) in accordance with the MCAA 2009 (as amended; "the 2009 Act").

45. The Marine (Scotland) Act 2010 applies to the Scottish inshore region (0 – 12 nm) and came into force in March 2010 in response to demands for improved management of the marine environment and its resources.

46. The 2010 Act introduced provisions for:

    - Marine planning: a new statutory marine planning system to sustainably manage increasing and conflicting demands on our seas;
    - Marine licensing: a streamlined licensing system, minimising the number of licences required for development in the marine environment; and
    - Marine conservation: enhanced powers to protect marine nature and historic areas of importance for marine wildlife, habitats and historic monuments.

3.5.2.5 Regional Marine Plans

47. The NMP sets the wider context for marine planning within Scottish waters and includes what should be considered when creating local, regional marine plans. Eleven Scottish Marine Regions have been created which cover sea areas extending out to 12 nm as defined by the Scottish Marine Regions Order 2015 which came into force on 13 May 2015 and as basis for regional marine planning, to be taken forward by marine planning partnerships. The Project's Windfarm Site falls outside 12 nm; however, the export cable will run through the "North East" marine region.

3.6 Environmental Policy and Legislation

3.6.1 Marine Strategy Regulations

48. The Marine Strategy Regulations (2010)[3] provide a UK-wide framework for maintaining or achieving 'good environmental status' (GES) in the marine environment and protect the resource based upon which marine-related economic and social activities depend.

49. The UK Marine Strategy Part Three publication details the Programme of Measures the UK will use until 2027 to support progress towards GES, the next evaluation of which will be in the 2024 assessment. It enshrines the requirement to assess, monitor and put in place measures to achieve or maintain GES for UK seas. The aims of the Marine Strategy Regulations 2010 have been adopted and incorporated into Scotland's NMP (**Section 3.5.2.1**). The UK Marine Strategy Part Three is currently being updated but the updated programme of measures was not available at submission.

3.6.2 The Convention on Biological Diversity

50. The Convention on Biological Diversity (CBD) is a legally binding treaty to which the UK is one of 168 signatories and came into force in December 1993. It has three main objectives:

    - the conservation of biological diversity;
    - the sustainable use of the components of biological diversity; and
    - the fair and equitable sharing of the benefits arising from the utilisation of genetic resources.

51. The CBD recognised for the first time in international law that the conservation of biological diversity is "a common concern of humankind" and is an integral part of the development process. The CBD covers all ecosystems, species, and genetic resources. A number of major United Nations (UN) and EU initiatives are aimed at contributing towards meeting the objectives of the CBD. These include the Bern and Bonn conventions and the establishment of the Natura 2000 network across Europe.

52. Scotland has signed up to a number of international conventions (known as Multilateral Environmental Agreements) of which the CBD is one of them.

3.6.3 The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)

53. The Ramsar Convention is the intergovernmental treaty that provides the framework for the conservation and wise use of wetlands and their resources. The Convention was adopted in Ramsar (Iran) in 1971 and ratified by the UK in 1976. The criteria for assessing a site for designation as a Ramsar Site include whether the wetland supports 20,000 water birds and/or supports 1% of the individuals in a population of one species or subspecies of water bird. Relevant Ramsars are included in the EIA and HRA where applicable.

3.6.4 Protected Habitats and Species

54. The following Scottish regulations[4] afford protection to wild flora and fauna:

    - The Conservation of Habitats and Species Regulations 2017 (as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019);

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[3]The Marine Strategy Regulations 2010 transpose The Marine Strategy Framework Directive (Directive 2008/56/EC) within the UK
[4] These regulations transpose EC Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, known as the Habitats Directive, and EC Directive 2009/147/EC on the conservation of wild birds, known as the Birds Directive into Scottish law

- The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (as amended by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019); and
- The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019) (referred to as the "Offshore Marine Regulations 2017") (applies to Marine Licence and s.36 consent applications within Scottish waters beyond 12 nm).

55. Changes have been made to these regulations so that Scotland maintains the same standards provided by the EU Habitats and Wild Birds Directives.

56. The Habitats Directive aims to conserve natural habitats of wild fauna and flora and is intended to protect biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species, including protection for specific habitats listed in Annex I and species listed in Annex II of the Directive. The Birds Directive provides a framework for the conservation and management of wild birds in Europe. Both Directives require national Governments to establish a European-wide network of protected sites: Special Area of Conservation (SAC) for habitats, and Special Protection Areas (SPAs) for birds. UK Government policy affords the same protection to Ramsar sites as for SACs and SPAs. Post-Brexit, these sites are known collectively as National Site Network sites in the UK[5].

57. Where a project is likely to have a significant effect on a National Site Network site, regardless of whether the project location is within or beyond the 12 nm boundary, there is a requirement for the competent authority (Scottish Ministers) to carry out an Appropriate Assessment. The Applicant submitted a **Habitat Regulations Appraisal (HRA) Screening Report** on 14th December 2021 (**Appendix 3.1**) and a Screening Response was provided as part of the **Scoping Opinion** on 19th April 2022 (**Appendix 1.1**). Subsequently, the **Report to Inform Appropriate Assessment**, taking account of this Screening Response, has been submitted along with the application.

58. European Protected Species (EPS) are animal and plant species listed in Annexes II and IV of the Habitats Directive.

59. Additionally, Scotland designates Nature Conservation Marine Protected Areas (MPAs) within 12 nm under the Marine (Scotland) Act 2010. MPAs are designated to protect biodiversity and heritage, with specific focus on protected features (species, habitats, large scale features or geomorphological features). Where a project may have risk of hindering the achievement of the MPA's conservation objectives, the EIA Report for the project should include the necessary information to inform an MPA assessment. The MPA assessment is undertaken by the Public Authority (Scottish Ministers for marine licenses and s.36 consents) in consultation with NatureScot/JNCC. This **Offshore EIA Report** provides the required information to inform the MPA assessment for the Southern Trench MPA. A summary of potential impacts to the protected features of the Southern Trench MPA is provided in **Chapter 21: Offshore EIA Report Summary**, with detailed impact assessment provided in **Chapter 9: Benthic Ecology** and **Chapter 11: Marine Mammal Ecology** for screened in protected features.

[5] *Prior to Brexit, these sites were known as Natura 2000 sites*

3.7 Consenting Regime

60. As the Project is a generating station with a capacity of greater than 1 MW, it requires the following consents, licences and permissions:

- a s.36 consent under the Electricity Act 1989 for the wind turbines and inter-array cables;
- a marine licence under the MCAA 2009 for all works outside of 12 nm from the coast;
- a marine licence under the Marine (Scotland) Act 2010 for the part of the export cable which is within 12 nm of the coast;
- a marine licence or exemption for any sediment sampling undertaken as part of the pre-construction site investigation surveys;
- EPS licence for any pre-construction site investigation surveys were noise-emitting equipment is to be used;
- a marine licence for the clearance of an unexploded ordnance (UXO) carried out during the pre-construction phase, if required;
- an EPS licence for piling of the offshore substation platform (OSP); and
- an EPS licence for the clearance of UXO carried out during the pre-construction phase.

61. Additional applications will be made as necessary, as described within Marine Scotland's Offshore wind, wave and tidal energy applications: consenting and licensing manual (as amended) (Marine Scotland, 2018).

3.7.1 Section 36 Consent

62. As the Project is an offshore generating station which is greater than 50 MW and located in Scottish Offshore Waters (between 12 nm and up to 200 nm offshore) within the Scottish REZ, there is a requirement for consent under s.36 of the Electricity Act 1989. s.36 consent will allow for the installation, operation and maintenance of the wind turbines and inter-array cables associated with the Project.

3.7.2 Marine Licences

63. Within the UK offshore waters (between 12 nm and up to 200 nm offshore), the MCAA 2009 applies (**Section 3.5.2.4**). Under the MCAA 2009 (as amended) there is the requirement for a marine licence to be obtained prior to the construction, alteration or improvement of any works or deposit any object in or over the sea, or on or under the seabed. This applies to the offshore export cable, the wind turbines, inter-array cables, and any UXO removal that may be required to be carried out during the pre-construction phase.

64. Similarly, under the Marine (Scotland) Act 2010 (**Section 3.5.2.4**) which applies to Scottish Territorial Waters (between 0 and 12 nm from MHWS), there is also the requirement for a marine licence prior to the construction, alteration or improvement of any works or deposit any object in or over the sea, or on or under the seabed. This applies to the Project's export cable works, and any UXO removal that may be required to be carried out during the pre-construction phase.

65. In considering a Marine Licence application, the Scottish Ministers ensure the proposals are in accordance with the appropriate marine plans (as defined in the Marine (Scotland) Act 2010) and relevant marine policy documents (as defined in the MCAA 2009), unless exceptional circumstances indicate otherwise. When making their decision, the Scottish Ministers must also consider:

- environmental protection;
- human health;
- interference with other users of the sea;

- operational impacts of the development; and
- stakeholder engagement.

3.7.3 European Protected Species Licence

66. Protection is afforded to EPS[6] in Scottish territorial waters (out to 12 nautical miles) under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). Regulation 39(1) of these Regulations make it an offence to, amongst others, deliberately injure, harass or disturb an EPS in a manner that is likely to significantly affect the local distribution or abundance of the species, impair its ability to reproduce, feed, migrate, or hibernate. This includes all species of cetaceans (whale, dolphin and porpoise), which are likely to be encountered at the Project.

67. Further protection is afforded through an additional disturbance offence given under Regulation 39(2) which states that "it is an offence to deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean)". Outside of 12 nm, the extent of legislative protection against injury is the same as within 12 nm under The Conservation of Offshore Marine Habitats and Species Regulations 2017. However, the definition of disturbance outside of 12 nm does not extend to individual animals. Therefore, whilst disturbance of a single animal within 12 nm may be considered an offence and thus require an EPS licence, for an EPS licence to be required outside of 12 nm there must be disturbance of a significant group of animals.

68. The introduction of underwater noise through certain activities such as piling, seismic surveys, or the use of explosives to remove UXO (if required) may have the potential for disturbing marine mammals. Therefore, a screening exercise and risk assessment will be carried out to determine whether an EPS licence is required for these activities. Further details are included in **Chapter 10: Fish and Shellfish Ecology** and **Chapter 11: Marine Mammal Ecology.**

3.7.4 Consenting Process

69. Where an offshore wind farm, requires a s.36 Consent and a Marine Licence, Marine Scotland Licensing Operations Team (MS-LOT) can process both consent applications jointly. The consenting process is summarised below, in line with the relevant MS-LOT guidance document and the BSI (2015) EIA for offshore renewable energy projects guide.

3.7.4.1 Pre-Application

70. At the pre-application stage, developers are advised to undertake preparatory work and discuss proposals with MS-LOT as early as possible. The first step in the EIA process commences with screening and/or scoping exercises to confirm the requirement for EIA and scope of EIA respectively. It is encouraged that developers consult on the proposal as part of the consenting and EIA process with a variety of statutory consultees and stakeholders. MS-LOT consult with statutory and non-statutory consultees when an EIA screening and scoping opinion is requested by developers. In most cases, MS-LOT liaise directly with consultees but can also direct applicants to specific organisations if appropriate.

71. The Applicant elected not to undertake a screening exercise; however, MS-LOT requested a Scoping Report. An **Offshore Scoping Report** (**Appendix 1.2**) for the Project was submitted to Marine Scotland (on behalf of the Scottish Ministers) on 15 November 2021 (Royal HaskoningDHV, 2021). A **Scoping Opinion** (**Appendix 1.1**) was received on 19th April 2022 (Scottish Ministers, 2022), which has informed the development of the Project and the EIA.

[6] *All species listed in Annex IV of the Habitats Directive (see Section 3.7.2.1) are classified as European Protected Species (EPS), meaning that they are species of community interest in need of strict protection, as directed by Article 12 of the Directive.*

72. This **Offshore EIA Report** has been prepared based on advice provided in the **Scoping Opinion**, and the outcomes of additional ongoing consultation with statutory consultees and stakeholders on the development proposal.

Pre-Application Consultation

73. Where activity is planned within the Scottish Territorial Waters (i.e., from 0-12 nm), the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 (hereafter referred to as the PAC Regulations) apply. The PAC process provides opportunities to receive feedback from the public and organisations that can then be addressed in the application and supporting EIA Report. MS-LOT require applicants to have undertaken PAC with stakeholders, consultees and the public in accordance with the legislative requirements.

74. There is no provision for PAC in the MCAA 2009, so these requirements do not apply in respect of relevant applications in the Scottish Offshore Region. There are no statutory requirements for consultation during the pre-application stage for s.36 consent applications; however, the principles of the PAC Regulations have been followed for all offshore components of the Project.

75. A Pre-Application Consultation Event was held on 20th September 2022. Due the requirements of The Marine Works and Marine Licensing (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 the event was held virtually. 112 relevant marine stakeholders were informed of the Project and invited to the event. The event presented information boards on the Project and allowed for discussion on all aspects of the offshore works, with opportunities for completion of feedback forms. Comments and questions received as part of the PAC process have been incorporated in this **Offshore EIA Report** where appropriate. An **Offshore PAC Report** (**Appendix 6.2**), which details the consultation undertaken and the results received and how matters raised were addressed, is provided alongside this application.

3.7.4.2 Application and Determination

76. The Applicant has submitted the required consent applications, supported by this **Offshore EIA Report**, to MS-LOT. Once the application is accepted by MS-LOT, the Applicant will circulate application information to consultees identified by MS-LOT, and place copies of this information in public viewing places. The Applicant will also advertise the applications in relevant press, as indicated by MS-LOT. Publication and consultation on this **Offshore EIA Report** will be carried out in accordance with the EIA Regulations.

77. Consultees have a fixed period in which they may make representations on the consent applications, and these are considered by MS-LOT. Scottish Ministers then proceed to determine the applications and a decision is announced and published.

3.7.4.3 Post Consent

78. As part of a positive determination, MS-LOT may attach various conditions to the relevant licences and consents and the Applicant will have a statutory duty to comply with them.

References

BSI (2015) Environmental impact assessment for offshore renewable energy projects – Guide. Report Number PD 6900:2015.

Climate Change Committee (2021). COP26: Key outcomes and next steps for the UK. Available at: https://www.theccc.org.uk/wp-content/uploads/2021/12/COP26-Key-outcomes-and-next-steps-for-the-UK-Final.pdf.

Climate Change Committee (2022) 2022 Progress Report to Parliament. Available: https://www.theccc.org.uk/publication/2022-progress-report-to-parliament/ Last accessed 5th December 2022

DEFRA. 2015. Marine Strategy Part Three: UK Programme of Measures, December 2015. Available at: https://www.gov.uk/government/publications/marine-strategy-part-three-uk-programme-of-measures.

Department for Business, Energy and Industrial Strategy (2017a) The Clean Growth Strategy Leading the way to a low carbon future. The Stationary Office, London. Available at: https://www.gov.uk/government/publications/clean-growth-strategy.

Department for Business, Energy and Industrial Strategy (2020) Contracts for Difference for Low Carbon Electricity Generation - Consultation on proposed amendments to the scheme, Victoria Street, London. Available at: https://www.gov.uk/government/consultations/contracts-for-difference-cfd-proposed-amendments-to-the-scheme-2020.

Department of Energy and Climate Change (DECC) (2011a) Overarching National Policy Statement for Energy (EN-1). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf.

Department of Energy and Climate Change (DECC) (2011b) National Policy Statement for Renewable Energy Infrastructure (EN-3). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/37048/1940-nps-renewable-energy-en3.pdf.

Department of Energy and Climate Change (DECC) (2011c) National Policy Statement for Electricity Networks Infrastructure (EN-5). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47858/1942-national-policy-statement-electricity-networks.pdf.

European Commission (2022) 2030 Climate & Energy Framework. Available at: https://ec.europa.eu/clima/eu-action/climate-strategies-targets/2030-climate-energy-framework_en.

European Council and the European Parliament (2007) Communication from the commission to the European Council and the European Parliament - An Energy Policy for Europe, 2007. Available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52007DC0001.

HM Government. (2011). UK Marine Policy Statement. HM Government, Northern Ireland Executive, Scottish Government, Welsh Assembly Government. The Stationery Office Limited. Available at: https://www.gov.uk/government/publications/uk-marine-policy-statement.

INTOG (2021) Available at: https://marine.gov.scot/data/sectoral-marine-plan-offshore-wind-innovation-and-targeted-oil-and-gas-decarbonisation-intog.

Marine Scotland (2013). Planning Scotland's Seas: SEA of Plans for Wind, Wave and Tidal Power in Scottish Marine Waters Environmental Report. Available at: https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2013/07/draft-sectoral-marine-plans-offshore-renewable-energy-scottish-waters-strategic/documents/00428212-pdf/00428212-pdf/govscot%3Adocument/00428212.pdf.

Marine Scotland (2015a). Scotland's National Marine Plan: A Single Framework for Managing Our Seas. Available at: https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2015/03/scotlands-national-marine-plan/documents/00475466-pdf/00475466-pdf/govscot%3Adocument/00475466.pdf.

Marine Scotland (2018) Marine Scotland's Offshore wind, wave and tidal energy applications: consenting and licensing manual (as amended). Available at https://www.gov.scot/publications/marine-scotland-consenting-licensing-manual-offshore-wind-wave-tidal-energy-applications/.

Marine Scotland (2020). Marine Scotland Consenting and Licensing Guidance For Offshore Wind, Wave and Tidal Energy Applications. Available at: https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/02/marine-licensing-applications-and-guidance/documents/guidance/guidance-manual-for-offshore-wind-wave-and-tidal-energy-application/guidance-manual-for-offshore-wind-wave-and-tidal-energy-application/govscot%3Adocument/Guidance%2BManual%2Bfor%2BOffshore%2BWind%252C%2BWave%2Band%2BTidal%2BEnergy%2BApplication.pdf.

Oil and Gas UK (OGUK) (2021). North Sea Transition Deal. Available from: https://www.gov.uk/government/publications/north-sea-transition-deal Accessed October 2021

Royal HaskoningDHV (2021) Green Volt Offshore Windfarm Environmental Impact Assessment – Offshore Scoping Report. Available at: https://marine.gov.scot/data/scoping-request-green-volt-floating-offshore-wind-farm-east-aberdeenshire-coast.

Scottish Government (2010) Scotland's offshore wind route map: Developing Scotland's offshore wind industry to 2020. Available at: https://www.gov.scot/publications/scotlands-offshore-wind-route-map-developing-scotlands-offshore-wind-industry/documents/.

Scottish Government (2013) Electricity generation policy statement 2013. Available at: https://www.gov.scot/publications/electricity-generation-policy-statement-2013/

Scottish Government (2014a). Scotland's Third National Planning Framework. Available at: https://www.gov.scot/publications/national-planning-framework-3/#:~:text=This%2C%20Scotland%27s%20Third%20National%20Planning,economic%20growth%20across%20the%20country.

Scottish Government (2014b). Scottish Planning Policy. Available at: https://www.gov.scot/publications/scottish-planning-policy/.

Scottish Government (2015) Scotland's National Marine Plan. Available at: https://www.gov.scot/publications/scotlands-national-marine-plan/.

Scottish Government (2017). The Scottish Energy Strategy: The Future of Energy in Scotland. Available at: https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/12/scottish-energy-strategy-future-energy-scotland-9781788515276/documents/00529523-pdf/00529523-pdf/govscot%3Adocument/00529523.pdf.

Scottish Government (2020a). Sectoral Marine Plan for Offshore Wind Energy. Available at: https://www.gov.scot/publications/sectoral-marine-plan-offshore-wind-energy/documents/.

Scottish Government (2020b) Securing a green recovery on a path to net zero: climate change plan 2018–2032 – update. Available at: https://www.gov.scot/publications/securing-green-recovery-path-net-zero-update-climate-change-plan-20182032/.

Scottish Government (2021) Energy Strategy: Position Statement. ISBN: 9781800047297. Available at: https://www.gov.scot/publications/scotlands-energy-strategy-position-statement/documents/.

Scottish Government (2022) Climate Change Policy. Available at: https://www.gov.scot/policies/climate-change/.

Scottish Government (2022). Offshore renewable energy: decommissioning guidance for Scottish waters. Available at https://www.gov.scot/publications/offshore-renewable-energy-decommissioning-guidance-scottish-waters/.

UK Government. (2009) Climate Change (Scotland) Act 2009. Available: https://www.legislation.gov.uk/asp/2009/12/contents.

UNFCCC (2016a) Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015 (FCCC/CP/2015/10).

UNFCCC (2016b) Proceedings of the 2016 twenty-second session of the Conference of the Parties (COP 22) and the twelfth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP 12) held in Marrakech, Morocco. Available at: https://unfccc.int/event/cop-22.

UNFCCC (2017) UN Climate Change Annual Report 2017. Available at: https://unfccc.int/resource/annualreport/.