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Our Reference: MS-00009291

08 December 2021

Dear Mr McKeown

MARINE (SCOTLAND) ACT 2010

THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017

MARINE AND COASTAL ACCESS ACT 2009

THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2007

DECISION NOTICE – MARINE LICENCE TO CONSTRUCT, ALTER OR IMPROVE WORKS IN THE SCOTTISH MARINE AREA AND THE UK MARINE LICENSING AREA FOR THE SEAGREEN 1A OFFSHORE TRANSMISSION INFRASTRUCTURE ASSOCIATED WITH THE SEAGREEN ALPHA AND BRAVO OFFSHORE WIND FARMS, WITH LANDFALL AT COCKENZIE.

1 Background

1.1 On 10 October 2014, the Scottish Ministers, granted in favour of Seagreen Alpha Wind Energy Limited (Company Number 07185533) and Seagreen Bravo Wind Energy Limited (Company Number 07185543), consents under section 36 of the Electricity Act 1989 in respect of the Seagreen Alpha and Bravo Offshore Wind Farms. Marine licences for the Seagreen Alpha and Bravo Offshore Wind Farms and the Offshore Transmission Asset were also awarded by the Scottish Ministers on 10 October 2014, under Part 4 of the Marine (Scotland) Act 2010 ("the 2010 Act") and the Marine and Coastal Access Act 2009 ("the 2009 Act"). A marine licence was later awarded by the

Scottish Ministers for the Alternative Landfall Cable Installation on 01 October 2020, under part 4 of the 2010 Act.

2 Application and description of the Works

2.1 On 5 March 2021, Seagreen 1A Ltd. (company number 12575047), having its registered office at No. 1 Forbury Place, 43 Forbury Road, Reading ("the Applicant"), submitted to the Scottish Ministers an application under part 4 of the 2010 Act and the 2009 Act, for a marine licence ("the Marine Licence") to construct, alter or improve the Seagreen 1A export cable ("the Works") associated with the Seagreen Alpha and Seagreen Bravo Offshore Wind Farms ("the Project"). The application was accompanied by an Environmental Impact Assessment Report ("EIA Report") as required under the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the 2017 MW Regulations") and the Marine Works (Environmental Impact Assessment) Regulations 2007 ("the 2007 MW Regulations). The EIA Report included a Habitats Regulations Appraisal ("HRA"), referred to as a Nature Conservation Appraisal, as required under the Conservation of Offshore Marine Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994 ("the Habitats Regulations"). The EIA Report is referred as part of the application ("the Application").

2.2 The Works comprise the construction and operation of a single high voltage alternating current export cable from the Project to landfall at Cockenzie, East Lothian. The cable extends to approximately 110 kilometres ("km") in length and will be installed within a cable corridor which will vary in width, however it is anticipated that the maximum width of the cable corridor will be 1.6km. The Works include scour protection and cable protection. The purpose is to maximise energy generation and facilitate full export capacity for the Project.

2.3 The total area of the cable corridor is 116.3km^2 and the location and boundary of the site of the Works ("the Site") is shown delineated in Figure 1.

2.4 The Applicant estimates that 80% of the export cable will be buried to a depth between 1 metre ("m") and 3m. The remaining 20% of the export cable will be protected by rock placement, concrete mattresses and grout bags. Horizontal directional drilling will be used for installation at the export cable's shore end, and cast iron segments may be used for additional cable protection and stability at the Project's offshore substation platform.

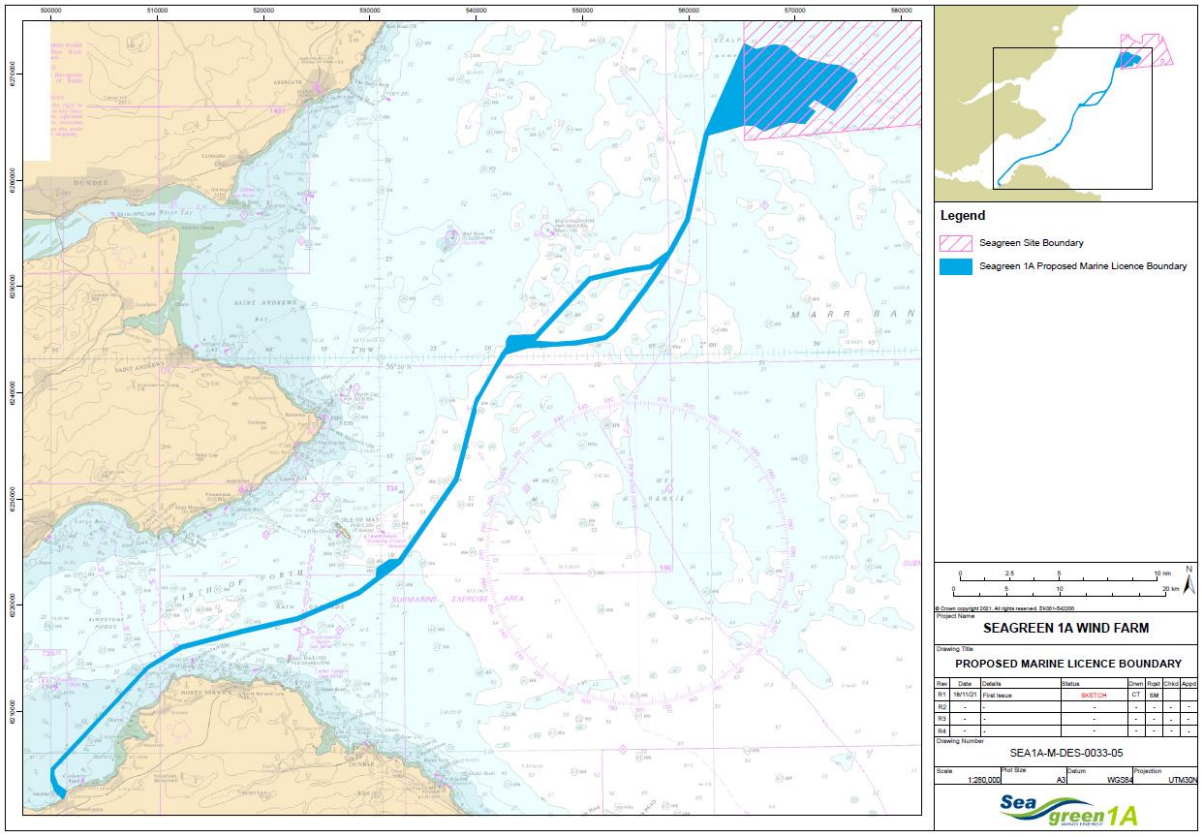

Figure 1: Chart detailing the Seagreen 1A export cable corridor

2.5 The Applicant applied for the Works to take place from April 2023 to June 2024. The indicative construction programme provides for 24/7 hour working, with no seasonality restrictions. Excluding weather delays the Applicant estimates that the seabed preparation will take four weeks, with the landfall preparation at Cockenzie and trenchless installation to take two months. The cable lay with post lay burial will last up to six weeks and the cable pull in, cable protection and post-lay survey will each last one week.

This decision notice contains the Scottish Ministers' decision to grant regulatory approval for the Works detailed above, in accordance with regulation 23 of the 2017 MW Regulations, regulations 23 and 24 of the 2007 MW Regulations, and section 27(1) of the 2010 Act and section 69(1) 2009 Act.

3 Summary of environmental information

3.1.1 The environmental information provided was:

- An EIA Report that provided an assessment of the impact on a range of receptors.

- Benthic Validation Survey Report and Findings that provided validation of the desktop data used in the EIA Report in respect of benthic habitats and biotopes

3.1.2 In December 2020, the Applicant submitted a screening report and a request for a screening opinion in respect of the Works to the Scottish Ministers. Following consultation with statutory consultees, a screening opinion was issued by the Scottish Ministers on 19 February 2021, advising that the proposed Works are an EIA project under the 2017 MW Regulations and the 2007 MW Regulations and that an EIA was required to be carried out in respect of the proposed Works. The Applicant did not request a scoping opinion.

3.1.3 A summary of the environmental information provided in the EIA Report is given below.

3.2 Natural Fish and Shellfish Resource

3.2.1 The impacts on natural fish and shellfish receptors within the vicinity of the Works were assessed in the EIA Report. The assessment identified nephrops as present in high densities within the Site, especially within 12 nautical miles ("nm"). European lobster, crab and scallops were present in lower densities, within the offshore section of the Works. The assessment also identified the potential for the Works to overlap with spawning grounds of sandeel and nephrops.

3.2.2 No protected sites designated for natural fish or shellfish species were identified to overlap with the Works. The River Teith Special Area of Conservation ("SAC") is located 55km west of the Works. The SAC is designated for migratory fish species which may use waters relevant to the Works as migratory pathways. The assessment identified these migratory fish species to be Atlantic salmon and sea lamprey.

3.2.3 The impact assessment considered the potential impacts of habitat disturbance from installation and decommissioning activities in relation to sandeel, nephrops, scallops and herring. The potential operational impacts of electromagnetic field ("EMF") emissions to migratory fish were also considered.

3.2.4 Seabed disturbance was assessed as being highly localised and temporary. The assessment concluded that the impacts were minor adverse for scallops and sandeel and negligible for nephrops and herring. The impacts of EMF on migratory fish species were considered to be negligible.

3.2.5 The EIA Report concluded that the potential impacts of the Works on fish and shellfish receptors were not significant both from the project alone and along with other existing or planned projects.

3.3 Marine Mammals

3.3.1 The EIA Report identified four cetacean species most commonly recorded within the region covered by the Works - harbour porpoise, bottlenose dolphin, minke whale and white-beaked dolphin. No protected sites, designated for cetaceans, which crossed the Works were identified in relation to cetaceans.

3.3.2 Grey seals and harbour seals were reported to occur in low densities within the Site, densities of grey seals were reported to increase where the Works approach North Berwick. The closest European sites designated for seals were reported to be the Isle of May SAC, designated for grey seals (3.9km from the Works) and the Firth of Tay and Eden Estuary SAC, designated for harbour seals (30km from the Works).

3.3.3 The impact assessment considered the potential impact of underwater noise associated with the Works, both in terms of injury and disturbance to marine mammals. The assessment was informed by underwater noise modelling.

3.3.4 The EIA Report concluded that there could be potential disturbance of cetaceans and seals as a result of some of the offshore survey activities which was predicted to be of moderate significance. These survey activities could occur both pre - and post-installation. Mitigation in the form of marine mammal observers is proposed and the residual impacts were considered to be not significant. Cumulative impacts with nearby projects were identified, however, these were also considered not significant.

3.4 Commercial Fisheries

3.4.1 The Applicant conducted an assessment of the impacts on commercial fisheries as a result of the construction, decommissioning and operational stages of the Works.

3.4.2 During construction and decommissioning phases there is potential for temporary loss or restricted access to fishing grounds. The Applicant assessed that any effects on commercial fisheries receptors are expected to be temporary, short in duration and localised to the 500m safety zones around the installation and survey activities.

3.4.3 The EIA Report details the commercial fishery locations in the waters within the vicinity of the Works. Nephrops trawlers operate from Port Seton, Pittenweem, Dunbar and North Berwick ports, whilst scallop dredgers are described as ‘nomadic.’ The EIA Report states that few vessels operate static gear within the waters relevant to the Works and those that do are mostly located in the northeast end of the export cable corridor. However, there are a small number that operate within 1 nm of the coast at Port Seton.

3.4.4 During construction and decommissioning the impact of temporary loss or restricted access to fishing grounds for scallop dredgers and nephrops trawlers was assessed as negligible due to the expectation that fishing vessels will be able to resume access to fishing grounds following completion of construction and subject to the following embedded mitigation:

- Adherence with the provisions of the International Regulations for the Prevention of Collision at Sea for all contracted vessels, including the display of appropriate lights and shapes such as when vessels are restricted in their ability to manoeuvre;
- A defined procedure for dropped objects, and defined claim processes for loss/damage to fishing gear/vessels which is thought to be attributable to the Works; and
- Production of a cable burial risk assessment and Cable Plan ("CaP"), which will include details on the planned approach for tasks such as post-installation and cable burial inspection surveys.

3.4.5 It was reported in the assessment that vessels which operate static fishing gear have less flexibility in terms of the locations they can fish, they also have smaller operating ranges. The impact assessment concluded that the residual effect would be minor, applying the mitigation measures detailed in section 9.9.3 of the EIA Report.

3.4.6 The potential impact of displacement of fishing activity into other areas was assessed as minor for static gear vessels and negligible for scallop dredgers and nephrops trawlers.

3.4.7 Maintenance activities are expected to occur infrequently and post installation surveys and over trawl surveys will provide information on the condition and location of the export cable. The EIA Report concluded that during operation impacts to all sectors of the fishing industry would be negligible when mitigation is applied.

3.4.8 Where the cable cannot be buried, it will be given protection, with rock replacement being the preferred method.

3.4.9 Where sections of cables are exposed, a protocol will be initiated, including distribution of the nature and location of the exposure to fisheries stakeholders and applied recommended safety zones.

3.4.10 In terms of safety issues in relation to fishing vessels, the EIA Report concluded that during all stages of the Works' impacts would not be significant.

3.4.11 The Applicant committed to a range of mitigation measures detailed in section 9.9.3 of the EIA Report to minimise potential impacts of the Works to commercial fisheries including:

- Appointment of a Fisheries Liaison Officer (“FLO”) to maintain proactive consultation with the fishing industry;
- Adherence to best practice guidance with regards to fisheries liaison;
- Timely and efficient distribution of Notice to Mariners (“NtM”), Kingfisher notifications and other navigational warnings;
- The appointment of Offshore FLOs on board contracted vessels
- Notification to the UK Hydrographic Office (“UKHO”) and Kingfisher of the Works;
- Following review of the post-installation survey, where areas of concern or where the target depth of burial is not achieved a geophysical survey will be carried out;
- If required and in consideration of the data collected during the geophysical survey, Seagreen 1A will carry out a single over trawl survey within 12 months of the installation and any protection works being completed;
- Seagreen 1A will conduct a detailed over trawl survey specification that will include a description of the appropriate vessel to undertake the survey, the type, specifications and rigging configuration of the trawl to be deployed and the towing pattern to be followed;
- Seagreen 1A will carry out a risk assessment for the need for guard vessels during the Works; or in the event of a cable exposure during operational phase of the cable's life;
- An evidence-based cooperation payment policy will be in place for static fishing gear operators which are requested to relocate fishing gear from the offshore Seagreen 1A project, where relevant, in accordance with Fishing Liaison with Offshore Wind and Wet Renewables Group (“FLOWW”) guidance.

3.4.12 The EIA Report gave consideration to the cumulative impacts between the Works and:

- The Seagreen Project
- Neart na Gaoithe Offshore Windfarm
- Inch Cape Offshore Windfarm
- Berwick Bank Offshore Windfarm
- Marr Bank Offshore Windfarm

3.4.13 The EIA Report concluded that the Works were localised, had a short duration, are temporary in nature and implementing all additional mitigation, no cumulative impacts are expected to occur and are not regarded as significant in EIA terms.

3.5 <u>Shipping and Navigation</u>

3.5.1 A shipping and navigation assessment was conducted, which considered the potential impacts associated with shipping, anchoring and fishing.

3.5.2 Construction impacts that were assessed included the those relating to the collision risk, disruption of other sea users, collision with third-party wind turbines, and the risk associated with vessel anchors and fishing gear interacting with exposed cables.

3.5.3 Operation and maintenance impacts that were assessed included the risk associated with the cable interacting with vessel anchors or fishing gear, vessel grounding due to reduced under keel clearance, collision risk, and magnetic compass interference.

3.5.4 The impact assessment concluded that the potential impacts of the Works were broadly acceptable or tolerable, both from the project alone and cumulatively with other projects. Additional mitigation measures which could be implemented include minimising the length of time that the cable is left exposed, the circulation of information to shipping and navigation receptors, and the implementation of a post-lay compass deviation survey.

3.6 Marine Archaeology

3.6.1 The Marine Archaeology impact assessment outlined the potential impacts of the Works on the marine historic environment.

3.6.2 The EIA Report assessed the potential impacts to marine archaeology features arising from direct and indirect damage or destruction during cable installation construction, operation and decommissioning. In order to avoid the potential damage or destruction of marine archaeological features, the final cable route will be designed to avoid any known marine archaeological assets, wherever possible, using the latest marine survey data collected by the Applicant in Spring 2021. A Written Scheme of Investigation ("WSI") and a Protocol for the Archaeological Discovery ("PAD") will also be produced which will set out the mitigation to be set in place to avoid or minimise any impacts on marine archaeological features.

3.6.3 The EIA Report concluded that effects on marine archaeological features were not significant from the Works alone or cumulatively with other projects.

4 Consultation

4.1.1 In accordance with the 2007 MW Regulations and the 2017 MW Regulations, on 5 March 2021, the Applicant submitted an EIA Report describing the Works and giving an analysis of its environmental effects.

4.1.2 Advertisement of the Application was made in the local and national press and the Application website. The notices were placed in the public domain and the opportunity given for those wishing to make representations.

4.1.3 The dates of the consultation exercise is given below. The regulatory requirements of the 2007 MW Regulations, the 2017 MW Regulations, the

2010 Act and the 2009 Act regarding consultation and public engagement have been met and the responses received taken into consideration. Where matters have not been fully resolved, conditions have been included to ensure appropriate action is taken.

Document	Date received	Dates of consultation	Publication
EIA Report and Application and Appendices Marine licence application and supporting documentation	5 March 2021	13 May - 24 June 2021	Applicant's website (13 May 2021 Marine Scotland Information (12 May 2021) Edinburgh Gazette (14 May 2021) East Lothian Courier (13 May 2021)

4.1.4 A summary of the responses received is set out at sections 5, 6 and 7. In addition, specialist advice was provided by Marine Scotland Science ("MSS") and Transport Scotland ("TS") and the advice received is set out at section 8.

5 Summary of statutory consultee responses

5.1 Under the 2007 MW Regulations and the 2017 MW Regulations, the statutory consultees are as follows: NatureScot (operating name of Scottish Natural Heritage), the Scottish Environment Protection Agency ("SEPA") and Historic Environment Scotland ("HES"), as well as the relevant planning authorities whom the Scottish Ministers considered appropriate to consult in respect of the Works are East Lothian Council, Fife Council, Angus Council, Dundee City Council and Scottish Borders Council. No representations were received from Angus Council, Dundee City Council or Scottish Borders Council.

5.2 In addition, the Maritime and Coastguard Agency ("MCA") and Northern Lighthouse Board ("NLB") are statutory consultees in relation to marine licence applications under the Marine Licensing (Consultees) (Scotland) Order 2011.

5.3 East Lothian Council

5.3.1 East Lothian Council raised no objection to the Application and highlighted than an application for planning permission in principle for the associated onshore infrastructure had been received and was awaiting a decision. The planning permission has since been granted.

5.3.2 East Lothian Council deferred to NatureScot to provide advice on nature conservation interests. East Lothian Council requested that survey records be shared with the Wildlife Information Centre.

5.3.3 East Lothian Council noted that works in the intertidal area are to be below ground and access will remain unrestricted post consent, and will therefore align with the East Lothian Local Development Plan 2018.

5.3.4 East Lothian Council suggested that mitigation measures would be required to address noise impacts and dust for the onshore works. East Lothian Council confirmed in later correspondence that no further assessment was required in the EIA Report for the Works.

5.3.5 East Lothian Council stated their disappointment that climatic factors were not considered in the EIA Report. In addition, it raised concerns in relation to sea level rise and the potential for the cable to become exposed and also the potential for the cable to potentially cause the loss of sand on nearby beaches and accelerate the erosion of land. East Lothian Council requested monitoring and mitigation of any change to coastal processes.

5.3.6 East Lothian Council advised that the Works would not result in significant adverse landscape and visual impact, provided that installation uses trenchless techniques.

5.3.7 East Lothian Council advised that the risk of pollution should be minimised, and appropriate arrangements made if an incident for which the Applicant is responsible occurs. It requested that conditions are placed upon the Marine Licence to ensure that appropriate financial arrangements are made for the lifetime of the Works to cover remediation of such pollution.

5.3.8 East Lothian Council advised that the requirement for a decommissioning programme should be secured by condition.

5.3.9 East Lothian Council noted the embedded mitigation summarised in table 4.1 of the EIA Report, and advised that the following should be secured through conditions:

- Development and implementation of a Marine Pollution Contingency Plan (“MPCP”) to reduce the risk of pollution of East Lothian’s coast.
- Development and implementation of a Construction Environmental Management Plan, also to reduce the risk of pollution of East Lothian’s coast, as well as mitigation of noise effects.

- Control measures and shipboard oil pollution emergency plans and carrying out of the appropriate practice should an accidental fuel release occur, to reduce the risk of pollution of East Lothian's coast.
- Equipping of vessels with waste disposal facilities to International Maritime Organisation ("IMO") MARPOL Annex 4 standards, to reduce the risk of pollution of East Lothian's coast.
- Management of ballast water discharge under the International Convention for the Control and Management of Ships Ballast Water and Sediments to reduce the risk of invasive non-native species.
- Adherence to IMO guidelines for the control and management of ships biofouling to minimize the transfer of invasive aquatic species, also to reduce the risk of introducing invasive non-native species.
- Measures to protect the interests and safety of commercial fishing including protection of rock berms to minimize snagging, employment of a FLO, preparation and implementation of a Fisheries Liaison and Mitigation Action Plan and NtM, to protect East Lothian's fishing industry.

5.3.10 Conditions have been attached to the Marine Licence to address the concerns raised by East Lothian Council. These mandate that the Applicant prepares, consults on, and adheres to, the terms of a MPCP, Decommissioning Programme ("DP"), Fisheries Management and Mitigation Strategy ("FMMS"), Environmental Management Plan ("EMP") East Lothian Council has included conditions to the onshore planning permission in principle to mitigate noise impacts.

5.4 Fife Council

5.4.1 Fife Council did not object to the Application and had no comment to make.

5.5 Historic Environment Scotland

5.5.1 HES did not object to the Application. HES advised that impacts on historic environment interests were not likely to be significant.

5.5.2 HES advised that the provision of a WSI and PAD should be secured through a condition to the Marine Licence. HES requested that it have input in to the WSI and PAD due to some concerns about the methodology used in the assessment.

5.5.3 A condition requiring the Applicant to prepare, consult on and adhere to, a PAD and WSI has been attached to the Marine Licence.

5.6 Maritime and Coastguard Agency

5.6.1 MCA did not object to the Application on the understanding that all maritime safety legislation is adhered to, and that the following risk mitigation measures take place:

- Condition - The licensee must issue local notification to marine users - including fisherman's organisations, and other local stakeholders - to ensure that they are made fully aware of the activity.
- Condition - The licensee must ensure that HM Coastguard, in this case zone3@hmcg.gov.uk , renewables@hmcg.gov.uk , is made aware of the Works prior to commencement.
- Condition - The licensee must notify the UK Hydrographic Office at least five days before commencement of the Works to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system.
- Condition - The licensee must ensure that the Works do not encroach on any recognised anchorage, either charted or noted in nautical publications, within the proposed licence area.
- Condition - Any licensed cable/pipeline protection works must ensure existing and future safe navigation is not compromised. The MCA would accept a maximum of 5% reduction in surrounding depth referenced to Chart Datum but under no circumstances should depth reductions compromise safe navigation. Where this is not achievable the licensee must obtain the agreement of the MCA and the NLB.
- Condition - A Marine Emergency Action Card must be completed for this site which should be sent to oelo@mcga.gov.uk. This is required should search and rescue operations be carried in or near the site, HM Coastguard need to know further details about the deployment to facilitate safe and effective incident coordination.
- Condition - Notify UKHO within five days after completion that work has been completed. Provide change details for permanent NM purposes e.g.: engineering drawings, post dredge surveys, details of new or changed aids to navigation.
- Condition - In case of exposure of cables on or above the seabed, the undertaker must within three days following identification of a potential cable exposure, notify mariners by issuing local notifications to mariners and by informing Kingfisher Information Service of the location and extent of exposure. Copies of all notices must be provided to Marine Scotland, MCA, NLB, and the UKHO within five days.
- Advisory - Any jack up barges / vessels utilised during the Works/laying of the cable, when jacked up, should exhibit signals in accordance with the UK Standard Marking Schedule for Offshore Installations.
- Advisory - The site is within port limits and the Applicant should gain the approval/agreement of the responsible local navigation authority or the Harbour Authority/Commissioners/Council in this case Forth Ports. They may wish to issue local warnings to alert those navigating in the vicinity to the presence of the Works, as deemed necessary.

5.6.2 Conditions have been attached to the Marine Licence to mitigate the impacts highlighted by MCA and include the requirement to prepare, consult on and adhere to the Emergency Co-operation Plan ("ERCoP"), CaP, Construction

Method Statement ("CMS"), Design Specification and Layout Plan ("DSLP"), Navigational Safety Plan ("NSP") and Vessel Management Plan ("VMP").

5.7 NatureScot

5.7.1 NatureScot did not object to the Application and advised that the installation, operation, maintenance, repair and decommissioning of the Works can be implemented without serious adverse effects on natural heritage.

5.7.2 NatureScot advised that that the Works are likely to have a significant effect on the following European sites and qualifying features:

- non-breeding waterfowl qualifying features of Outer Firth of Forth and St Andrews Bay complex Special Protection Area;
- non breeding wading and waterfowl qualifying features of the Firth of Forth SPA;
- grey seal qualifying feature of Isle of May SAC;
- harbour seal qualifying feature of Firth of Tay and Eden Estuary SAC
- bottlenose dolphin qualifying feature of Moray Firth SAC; and
- Atlantic salmon, sea and river lamprey qualifying features of the River Teith SAC.

Consequently, Marine Scotland, as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for these qualifying features.

5.7.3 NatureScot provided detailed advice on these qualifying interests and concluded that the Works will not adversely affect the integrity of any of the European sites listed above.

5.7.4 NatureScot advised that due to the short term, localised nature of the vessel activity associated with the Works, significant cumulative impacts are unlikely even were there to be an overlap in construction activities from any of the other Forth and Tay offshore wind farm projects.

5.7.5 NatureScot highlighted the potential through certain design features, such as J tubes and inter-array / export cable conduits to foundations - for seals to enter and get trapped during the construction phase. It recommend that these features are identified and solutions for closing any potential gaps incorporated into the design and included as part of the CMS.

5.7.6 NatureScot advised that given the distances involved that a harassment offence under The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014 is unlikely with respect to the four seal hauls-outs mentioned in section 8.5.2 of the EIA Report.

5.7.7 NatureScot advised that a European Protected Species ("EPS") licence will be required to address potential disturbance effects from underwater noise emitted during geophysical survey work associated with the installation,

operation, maintenance, repair and decommissioning phases. However, due to the short-term localised nature of these activities across the lifespan of the Works, they were of the view that there would be no detrimental effect on favourable conservation status of any EPS species from disturbance.

5.7.8 NatureScot detailed that the offshore section of the cable corridor route overlaps with the northern portion of the Scalp and Wee Bankie part of the Firth of Forth Banks Complex nature conservation Marine Protected Area ("ncMPA"). The site is designated for ocean quahog, offshore subtidal sands and gravels, shelf banks and mounds as well as Quaternary of Scotland: Moraines. The cable footprint within the Firth of Forth Banks Complex ncMPA is estimated to cover 81.84km^2, which represents 3.8% of the designated site, and the width of the zone of influence likely to reach 10m. Both the shelf bank and mounds, and the moraines key geodiversity features are considered to be very large-scale features and as such any habitat loss/disturbance or temporary increase in suspended sediments will be very localised and small in scale in comparison. NatureScot advised that the Works were not capable of affecting these features. In relation to the offshore subtidal sands and gravels and ocean quahog features, again NatureScot advised that any habitat loss/disturbance or temporary increase in suspended sediments will be localised and small in scale, and therefore, although the Works would be capable of affecting these features of the ncMPA, any effects would be insignificant. NatureScot advised that no further assessment of the ncMPA was required.

5.7.9 In relation to Priority Marine Features ("PMFs"), NatureScot advised that significant disturbance effects are unlikely due to the short term localised nature of the cable installation, operation, maintenance and repair and decommissioning activity.

5.7.10 Conditions requiring the Applicant to prepare, consult on and adhere to a MPCP, CaP, Construction Programme ("CoP"), CMS, EMP, VMP and Operation and Maintenance Programme ("OMP") have been attached to the Marine Licence to mitigate impacts on natural heritage interests.

5.8 <u>Northern Lighthouse Board</u>

5.8.1 NLB did not object to the Application. NLB noted the mitigations proposed for the construction, including promulgation of NtM, notifications to the UK Hydrographic Office and Kingfisher bulletin updates.

5.9 <u>Scottish Environmental Protection Agency</u>

5.9.1 SEPA was unable to provide a detailed response due to a serious cyber-attack and instead referred to its standing advice. SEPA advised that it would only comment on issues related to the onshore part of the project, and stated that it had already provided a response to the East Lothian Council consultation, which deals with the onshore element of Seagreen 1A project.

5.9.2 The 'SEPA Standing Advice for the Department for Business, Energy and Industrial Strategy and Marine Scotland on marine consultations'[1] has been considered during determination. The standing advice relevant to this project does not raise any concerns and notes that SEPA has no objection to this application and in this instance has no site-specific advice or comment to make.

6 Summary of non-statutory consultee responses

British Telecom ("BT")

6.1.1 BT did not object to the proposal and confirmed that the Works should not cause interference to BT's current and planned radio networks.

Fishermen's Mutual Association Pittenweem

6.1.2 Fishermen's Mutual Association ("FMA") Pittenweem objected to the Works and advised that the Works would cause more disturbance to the fishing sector and could lead to the demise of the Pittenweem trawler fleet.

6.1.3 FMA Pittenweem stated that advice from the fishing sector is not listened to and that the Scottish Government were putting targets before people's livelihoods and safety. It advised that the Vessel Management System and Automatic Identification System ("AIS") data the Applicant has used in the assessment is inaccurate and that Marine Scotland should use other sources, including the fishing sector, for information to look at trawler activity in the area.

6.1.4 FMA Pittenweem advised that the Applicant did not assess the effects of EMF from the cables on sea life and highlighted evidence of deformities to shellfish.

6.1.5 FMA Pittenweem do not agree with the Applicant's assessment of low impact on the local fleet, and consider this impact to be significant. It advised that temporary or permanent closure of fishing grounds has to be addressed properly and a fair compensation scheme agrees by the fishing sector.

6.2 Forth Ports

6.2.1 Forth Ports did not object to the Application and requested that the Applicant follow the usual process of informing Forth Ports marine colleagues of when it is surveying the area within Forth Ports jurisdiction, and informing Forth Ports of any vessels associated with the Works, with vessel names, dates and times for a navigation notice.

6.2.2 A condition has been included on the Marine Licence such that Forth Ports must be informed of the commencement of the works and Forth Ports will be consulted on the VMP.

[1] https://www.sepa.org.uk/media/143312/lups-gu13.pdf

6.3 Inch Cape Offshore Limited ("ICOL")

6.3.1 ICOL objected to the Application due it's view is that the export cable corridor presented in the Application (which overlaps 70-100% of ICOL's cable corridor) represents a significant risk to the delivery of ICOL's own export cables, licenced under ICOL's Offshore Transmission and Infrastructure marine licence. The Application outlines an intention to enter a proximity agreement in the future. It is ICOL's view that there were limited discussions between the Applicant and ICOL prior to the submission of the Application; no proximity agreement has been entered into; and ICOL does not consider a commitment to enter into a future agreement offers sufficient legal protection at this time.

6.3.2 ICOL requested conditions to the Marine Licence to reduce the overlap between the ICOL cable corridor and the Works to that within a shapefile received by ICOL from the Applicant on 10 June 2021; to require a mutually agreeable proximity agreement to be entered into prior to the commencement of the Works; and to include a binding commitment that the Works will be undertaken in such a way that ICOL could still retain use of its landfall option west of Greenhills.

6.3.3 ICOL acknowledged that the updated cable corridor provided to them by the Applicant on 10 June 2021 would be "generally acceptable subject to detailed review". They requested that in the absence of a proximity agreement having been agreed between ICOL and the Applicant that the cable corridor of 10 June 2021 was reflected in the marine licence.

6.3.4 Crown Estate Scotland ("CES") wrote to both the Applicant and ICOL, acknowledging that the overlap between ICOL's cable and the Works was intentional and advising that current CES windfarm and Offshore Transmission Operator agreements for lease ("AfLs") and leases are drafted in a manner intended to implement its policy of ensuring congested areas of seabed and at the shore are not secured exclusively for the benefit of one party, regardless of whether development takes place. CES further advised that AfLs permit third party rights over other option sites, subject to notification to the tenant, and, once a lease has been granted, that tenants are not to unreasonably withhold or delay consent to requested crossing arrangements.

6.3.5 Marine Scotland – Licensing Operations Team ("MS-LOT") has received information from CES that it would consider this issue prior to the service of an Option Notice. CES has requested that the Applicant and ICOL to work together to reach a proximity agreement. We understand that CES will request confirmation from all parties involved that a proximity agreement has been reached and, where appropriate, take that into account as part of the process of approving each party's preferred cable corridor prior to them stepping through to lease. Where the parties have been unable to agree a proximity agreement, we understand that CES will consider any relevant industry best practice, the justification for the proposed routing prior to service of the Option Notice and evidence provided by any neighbouring party which identifies specific issues associated with the proposed Lease cable corridor.

6.3.6 The Applicant has provided MS-LOT with the proposed cable corridor of 10 June 2021, as referred to in ICOL's consultation response. This cable corridor has been considered by MS-LOT and reflected in the marine licence determination. Conditions have been included within the marine licence to reflect the Applicant's commitments made in email correspondence to MS-LOT to limit the timing of the construction works in the nearshore area and the footprint of the final constructed nearshore works. A condition has also been included on the marine licence to require that the Applicant consults ICOL during the design development phase on the overlap of the Works and the ICOL offshore transmission works and ICOL has been included as a consultee to the CaP. Taking this into account alongside the proposed approach from CES, we do not consider it appropriate to include the conditions proposed by ICOL on the Applicant's marine licence.

6.4 Ministry of Defence ("MOD")

6.4.1 MOD did not object to the Application, and had no further comments.

6.5 Neart na Gaoithe Offshore Wind Limited ("NnGOWL")

6.5.1 NnGOWL did not object to the application. NnGOWL requested continued dialogue regarding proposed work within the cable corridor areas closest to the NnG Offshore Wind Farm, particularly where this concerns survey or construction work close to NnG infrastructure, including inter-array cables, turbines and construction navigation buoyage.

6.6 Royal Society for the Protection of Birds ("RSPB") Scotland

6.6.1 RSPB Scotland did not object to the Application and had no further comments.

6.7 Royal Yachting Association Scotland ("RYA")

6.7.1 RYA did not object to the Application. RYA advised that as the line of the cable crosses the route taken by vessels on passage up the east coast of Scotland, all harbours and marinas between Newcastle-upon-Tyne and Peterhead as well as all clubs on the Forth should be sent the relevant Notices to Mariners.

6.8 Scottish Water

6.8.1 Scottish Water did not object to the Application.

6.8.2 Scottish Water advised that there are no Scottish Water drinking water catchments or water abstraction sources, which are designated as Drinking Water Protected Areas under the Water Framework Directive, in the area that may be affected by the Works.

6.9 Scottish Fishermen's Federation ("SFF")

6.9.1 SFF objected to the Application. SFF questioned whether the Application included genuine mitigation measures and raised what they considered to be

a lack of detail on changes to the seabed from construction activities, which they said the fishing industry should be informed of.

6.9.2 SFF highlighted the importance of over-trawl surveys to allow the safe return of fishing vessels to the area, and the need for engagement with the industry on this, and the planning of mattress placement where burial is not possible. The SFF advised that a single over-trawl survey within 12 months is not sufficient and ran the risk of fishing displacement for 12 months. Surveys, they said, should be undertaken as early as possible. SFF advised that they would expect over-trawl surveys to also include sample tests of areas where the cable is buried, in addition to where cable protection is in place.

6.9.3 SFF expressed their disappointment that co-existence was not at the heart of the Application. They questioned whether the fisheries policies within the National Marine Plan ("NMP") had been considered. SFF advised that there was no indication that fishing has been considered in the choice of the cable route. It considers that the route which runs parallel to the ICOL route extends the impacted ground.

6.9.4 SFF disagreed with the proposal to delay the provision of a decommissioning plan until the offshore transmission operator is in place, it is the SFF view that it should be integral to the licensing procedure.

6.9.5 SFF advised that there should be further detail on the ICOL cable and east coast high-voltage direct current cable which are in close proximity.

6.9.6 SFF advised that research shows that EMF does affect the ecosystem and that conclusions of this effect being negligible should be reviewed.

6.9.7 SFF suggested that the Applicant should consider the need for co-operation payments to the mobile gear vessels by way of a goodwill gesture, this also applies to the nephrops and scallop fishers. SFF advised that attributing the nephrops and scallop vessels to large operational ranges is an attempt to play down the impacts on these vessels, and that there is a 7-10 year cycle in scallop fishing, so assessing the cycle is the only way to assess the fishery in this area. Local knowledge could be mined to give a better idea of the variations in the nephrops fishery.

6.9.8 SFF advised that real impacts of displacement are in their view played down, but experience on the east coast suggested that those who are refunded for their displacement often have negative impacts on vessels which don't qualify for the funding (secondary displacement). SFF said that they would hope to see a further discussion on how to address that problem.

6.9.9 SFF noted the mitigation in table 4.1 of the EIA Report, and advised that pre-construction surveys are not an exact science and the final position of the cable is most relevant. The importance of the relationship between the FLO and the Fishing Industry Representative was highlighted and the need to consult the industry on the need for over-trawl surveys.

6.9.10 SFF advised that there was no proof that operation and maintenance would have no impact on the fishing industry. They requested that a condition be included on the marine licence to measure this.

6.10 10 Metre and Under Association ("U10M Association")

6.10.1 U10M Association objected to the Application.

6.10.2 U10M Association considered that the cable route is based on financial considerations before anything else, and that there was no consideration of the fishing industry. It noted that the industry had previously opposed the ICOL cable route. The U10M Association said that it was not clear whether the connection point at Cockenzie was the only connection point offered to the Applicant and suggested that applicants should be transparent about this.

6.10.3 U10M Association questioned the reference in the EIA Report on extensive consultation with the fishing industry, as it first became aware of the proposal in December 2020. It explained that opposition to the Works had been raised at several meetings between December 2020 and June 2021; however it was of the view that these concerns are ignored by applicants.

6.10.4 U10M Association advised that pre-construction surveys cannot be relied on to estimate burial rates of the cable, and that experience from other projects indicates that burial rates decrease following geotechnical surveys.

6.10.5 U10M Association considered that data used in the EIA Report is flawed, and that this had been previously advised in relation to other applications. The data does not, according to the U10M Association, take into account the under 15m fleet, especially vessels under 10m, as very few under 10m vessels have AIS, or it is switched off. In addition, the AIS data was collected when the industry was affected by Covid-19.

6.10.6 U10M Association highlighted the importance of nephrops, crab, and lobster to the Pittenweem fleet and the importance to the local economy. U10M Association questioned the conclusions reached on the impacts to fish and shellfish which are assessed in the EIA Report as not significant, particularly when considered cumulatively with the ICOL cable. It highlighted the potential effects of EMF on crab and lobster which has been excluded from the assessment, and suggested that further research is required to understand the effects of EMF on nephrops.

6.10.7 U10M Association questioned the mitigation measures in table 4.1 of the EIA Report and suggested that the Applicant does not listen to the industry at meetings of the Forth and Tay Commercial Fisheries Working Group ("FTCFWG").

6.10.8 U10M Association considers that there is no evidence of the Applicant having regard to the NMP in terms of protecting submarine cables, whilst achieving seabed user co-existence or ensuring that existing fishing opportunities and

activities are safeguarded wherever possible. It highlights the importance of over-trawl surveys being agreed with the industry and being done well within the 12 months suggested by the Applicant.

6.10.9 U10M Association stated that there is no mention of financial compensation, and suggested that there will be loss of earnings particularly as the schedule of work indicates that construction will take place over a 15 week period during the high season for crab, lobster and nephrops.

6.10.10 U10M Association provided detailed comment on chapter 9 of the EIA Report – commercial fisheries. It advised that skewed assessments have been completed which underestimate the impacts on the local fishers. Other points made by U10M Association include:

- Repairs during maintenance should be assessed.
- Embedded mitigation is inadequate.
- Sensitivity to the under 12m nephrops fleet should be medium.
- Temporary loss or restricted access to fishing grounds during construction and decommissioning should be assessed as significant for the nephrops fleet and static gear fishing vessels.
- Displacement of fishing activity to other areas could be higher than assessed.
- Disagreement that snagging of gear is extremely unlikely and insist on conditions which require a minimum cable burial depth and over-trawl surveys.
- No geophysical surveys have been carried out to inform the cable burial depth so this is currently estimated.
- Rock placement is the preferred method of protection and this must be in line with industry standards and its composition and design be developed in consultation with fisheries representatives.
- If over-trawl surveys are not carried out until 12 months after installation this represents a long term loss of fishing grounds.
- There is the potential for areas of the cable to become exposed and there should be a condition on the Marine Licence requiring robust monitoring regime for the length of the cable with frequent post-installation surveys and additional over-trawl surveys if required to ensure that fishing activity can continue safely.
- It is unacceptable that the whole cable route is not subject to over-trawl survey, some areas where target burial depth is considered to have been achieved should be surveyed to ensure this is the case and the cable is at a safe level.
- There should be an evidence based form of financial compensation for the mobile sector as well as the static gear sector.
- The Works are a cumulative impact on the ICOL corridor already licensed. The development of offshore windfarms is very concentrated on the east coast of Scotland mainly Angus, Fife, East Lothian and Scottish Borders.

- The conclusion of no significant effect on commercial fisheries is not justified.

7 Representations from other organisations and members of the public

7.1 Williamson Bros Shellfish Ltd.

7.1.1 Public representation was received from Williamson Bros Shellfish Ltd which objected to the application, raising concerns regarding the impacts of the cable to displacement of fishing activities, and associated costs of this. Concern was also raised over the potential safety implications of trawling over cables and concern that over trawl surveys may result in the cessation of trawling on the entirety of the fishing grounds for the lifetime of the Works, which it argues should have been recognised the 'worst case scenario ' for impacts on the fishing industry. Williamson Bros Shellfish Ltd further noted concerns over the liaison contractor being a competitor and creating a conflict of interest.

8 Advice from third parties

8.1.1 MS-LOT sought advice from MSS and TS on the Application.

8.2 Marine Mammals

8.2.1 MSS agreed with the species of marine mammal included in the assessment and the impact pathways considered.

8.2.2 MSS advised that more up to date data was available in terms of population estimates for seals and bottlenose dolphin.

8.2.3 MSS agreed that there is the potential for disturbance to individual cetaceans and this will need to be addressed through the EPS licensing process. MSS agreed with the proposed embedded mitigation for survey activities that start during daylight hours. However as raised by NatureScot, MSS are concerned that the risk of injury is not mitigated for any survey works that start during darkness, or poor visibility. One option would be to use Passive Acoustic Monitoring ("PAM") to detect cetaceans, but MSS would encourage the Applicant to consider whether there are others ways to mitigate this risk, noting that there is a requirement to avoid any injury to cetaceans and seals.

8.2.4 MSS agreed with the NatureScot advice in relation to unexploded ordnance clearance, seal haul out sites and the issue of seals becoming trapped in infrastructure.

8.2.5 In relation to underwater noise MSS raised some concerns relating to the methodologies used in the assessment and provided advice on how this could be improved.

8.3 Ornithology

8.3.1 MSS advised that the indicative construction period identified in the EIA Report may avoid overwintering species that are sensitive to disturbance but may need to consider dispersing auks.

8.3.2 In relation to disturbance from vessels, MSS agreed with NatureScot that a VMP that specifically considers the protocols of the Scottish Marine Wildlife Watching Code ("SMWWC") should mitigate any potential direct impact from vessel activity to the breeding features of the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex SPA. Furthermore, MSS suggested that the VMP should consider vessel speed (particularly in transit to and from operational activities), details avoidance of assemblages of rafting birds and sensitive periods of time for disturbance of sensitive qualifying features; for example, guillemot fledging (beginning late June through to dispersal July- Mid-August), particularly (but not exclusively) in the areas of the cable route in closest proximity to breeding colonies (i.e. around Fidra and the Isle of May).

8.3.3 MSS advised that several non-breeding features of the Outer Firth of Forth and St Andrews Bay Complex SPA and the Firth of Forth SPA with direct connectivity to the Works are highly sensitive to disturbance and that whilst installation and operation and decommissioning are likely to be spatially and temporally localised, the effect of vessel presence (particularly during the installation or decommissioning period) can elicit a disturbance response for some species, such as the red-throated diver, even tens of kilometres from the activity. MSS agreed with NatureScot that adherence to a VMP which includes consideration of undertaking activities outside of the non-breeding season when sensitive features are present, as well as the protocols of the SMWWC, should prevent any likely significant effect from having an adverse effect on site integrity.

8.3.4 MSS agreed with NatureScot that activities that may increase suspended sediment concentrations are likely to be over a small spatial scale and temporary in duration affecting only small proportion of each SPA and are therefore not likely to significantly affect the marine ornithological features considered in the Application.

8.3.5 MSS agreed with NatureScot that impacts to prey are likely to be small scale and reversible, and are not likely to have significant impacts on marine ornithological features.

8.3.6 MSS agreed with NatureScot that the threat of marine pollution during all phases of the project should be captured by the MPCP and Ship Oil Pollution Emergency Plan.

8.3.7 MSS advised that little detail had been given to in-combination impacts, other than to highlight the overlap with the ICOL cable corridor. They however agreed with NatureScot that significant cumulative impacts were unlikely, even if there was overlap in activities.

8.4 Marine Fish Ecology

8.4.1 MSS recommended that the overlap of cable installation with the peak spawning period for nephrops was given further consideration.

8.4.2 MSS advised that effects of EMF are considered further with a particular focus on crustaceans such as lobster, nephrops and crab.

8.4.3 Following clarification information from the Applicant, MSS advised that based on the predicted EMF from the cable at the seabed (10 microtesla; 0.01 millitesla) and taking into consideration the latest research which shows physiological or behavioural changes at higher levels of EMF emissions, it is content that effects of EMF from the cable will not be significant.

8.4.4 MSS highlighted that the information on which its advice is based is the predicted EMF emissions from the cable from modelling. They advised of the need to gain *in situ* measurements from cables to validate modelling predictions. MSS would welcome the development of a strategic project to measure and monitor EMF, and would encourage the involvement of the Applicant in any future strategic projects to validate its predictions, contribute to the evidence base and improve assessments of EMF impacts. This work will also be important in helping to improve the understanding around the potential for population level effects on fish and invertebrates.

8.5 Commercial Fisheries

8.5.1 MSS welcomed the Applicant's commitment to undertaking post-installation surveys including over-trawl surveys.

8.5.2 MSS recommended that the Applicant demonstrates how they considered commercial fishing in their cable route planning and decision making.

8.5.3 MSS noted that cable burial is estimated to be along 80% of the cable, with 20% of the cable to be covered with cable protection measures such as rock dump or concrete mattresses. Since the most common methods of fishing in the area are demersal trawls and dredges, MSS advised that over-trawl surveys should be carried out using a local vessel and gear, to help test the safe use of fishing gear in this area and to minimise, as far as reasonably practicable, the risks of fishing gear snagging on the cable protection measures. MSS recommended that stretches of buried cable are reviewed in a post-lay cable survey to ensure that cable installation doesn't create any topographical features that may cause a snagging risk to fishing gear.

8.6 Diadromous Fish

8.6.1 MSS agreed with NatureScot that the activities associated with the construction, operations and maintenance, and decommissioning of the Works could have disturbance impacts on diadromous fish, including sea trout, Atlantic salmon and lampreys.

8.6.2 MSS advised that whilst there is currently insufficient evidence to quantify impacts to salmon (and other diadromous fish) from (i) disturbance, including physical disturbance and underwater noise, and (ii) EMF, these remain the two primary pathways which may have impacts on these species, including those which are connected to the River Teith SAC.

8.6.3 With respect to disturbance, salmon in the marine environment are considered most vulnerable when they are smolts, and so the smolt emigration period (typically mid-April to early July) is when salmon are most at risk from activities associated with this development.

8.6.4 For EMF, MSS agreed with the Applicant that the sensitivity of salmon to EMF is medium. The embedded mitigation (i.e. cable burial, where possible) will likely provide a degree of mitigation to diadromous fish.

8.7 Benthic Ecology

8.7.1 MSS advised that the effect of habitat removal and rock placement on the area of cable within the Firth of Forth Banks Complex ncMPA should be assessed. The laying of the cable will remove or disturb the protected habitat for which the ncMPA has been designated. The habitats and ecological communities, although widespread within the ncMPA, will experience physical removal in the area where the cable is laid, disturbance to a wider area during back-filling, and a short-term increase in suspended sediments and possibly smothering. MSS advised that these impacts should be assessed within this part of the ncMPA. This assessment should include an estimation of the area of habitat that could be lost or disturbed compared to the extent of this habitat.

8.7.2 A large section of the cable route is through burrowed mud. Results of the benthic validation survey (December 2020), together with earlier surveys have recorded the protected biotope, sea pens and burrowing megafauna (an OSPAR threatened and declining habitat and a component of the PMF, burrowed mud). The burrowing megafaunal component is partly covered by the nephrops assessment, but not the sea pens and other burrowing species. Cable laying may involve significant areas of habitat loss. This biotope has no resistance to habitat extraction, i.e. a physical change to another seabed type or sediment type. However, the biotope is widespread in the northern North Sea. MSS would expect the EIA Report to consider the cumulative impacts of habitat removal and habitat disturbance to this biotope from this cable, the ICOL cable and other projects in the region.

8.7.3 With particular regard to nephrops as a component of the burrowing megafauna, MSS agreed with the Applicant that they are fairly tolerant to smothering and increases in suspended sediment, but they are highly intolerant to substrate loss. Nephrops are ‘k’ strategists and thus recovery will take time. However, that recoverability is dependent firstly on recruitment from outside the trenched area as those animals within it would be lost, and secondly on the composition of the backfill. Nephrops inhabit areas with fine

cohesive mud which is stable enough to support their unlined burrow. Whether more nephrops can occupy the trenched zone would depend on the composition of the backfill and levels of oxygenation. Nephrops are reported as being highly intolerant to changes in oxygenation.

8.7.4 MSS advised that scallops are also highly intolerant to the substrate loss experienced through cable laying, but considered that they are likely to recover.

8.7.5 MSS noted that there is one stony outcrop which the Works will cross for which the EIA Report states they will use rock. MSS originally queried why the cable cannot be micro-sited around this feature in order to minimise disturbance to the faunal communities on deep low energy circalittoral rock buter later confirmed it was content that protection and micro-siting will be considered around the identified stony outcrop.

8.8 Physical Processes

8.8.1 MSS has no concerns about the cable having any significant impacts on the physical processes during operation or installation. The cable installation, mainly through burial, is unlikely to significantly change the seabed and will therefore not change to coastal processes. The short areas of cable protection proposed are either sufficiently offshore to pose no impact on coastal process, or so short that they are unlikely to have any impact. No additional monitoring or mitigation, above that currently being proposed, is there for necessary. The proposed embedded mitigations of cable protection using rock placement are deemed sufficient to adequately protect the cable and sensitive enough to the physical environment.

8.9 Aquaculture

8.9.1 MSS advised that there are no changes to the position of aquaculture sites on the east coast of Scotland in the surrounding area of the proposed Works. The nearest marine aquaculture sites in the vicinity are land based tank sites using pumped seawater, situated at St Andrews, Dalgety Bay, North Berwick and St. Abbs.

8.10 Transport

8.10.1 TS advised that in the event that such stone/ rock gravel deposits required during the construction of the Works will be transported by road, TS would seek an assessment of the potential environmental impacts associated with the increase in Heavy Goods vehicle (“HGV”) traffic on the surrounding road network, in line with the thresholds contained within the Institute of Environmental Management and Assessment Guidelines for Road Traffic. These specify that road links should be taken forward for detailed assessment if:

- Traffic flows will increase by more than 30%, or
- The number of HGVs will increase by more than 30%, or

- Traffic flows will increase by 10% or more in sensitive areas.

8.10.2 If any abnormal loads are likely to be required during construction, TS will require to be satisfied that the size of loads proposed can negotiate the selected route and that their transportation will not have any detrimental effect on structures within the trunk road route path.

8.10.3 TS said that a full Abnormal Loads Assessment report should be provided that identifies key pinch points on the trunk road network. They said that swept path analysis should be undertaken and details provided with regard to any required changes to street furniture or structures along the route.

8.10.4 A condition has been added to the Marine Licence for a Construction Traffic Management Plan for any construction materials associated with the construction of the Works required to be transported by road, including the requirement for an abnormal loads assessment, where relevant.

8.11 Summary

8.11.1 The Scottish Ministers have considered the advice provided in reaching their decision.

9 Inquiry

9.1 The Scottish Ministers did not require an inquiry to be held.

10 The Scottish Ministers Considerations

10.1 Determination of Marine Licence Applications

10.1.1 In determining the application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the Scottish Ministers have had regard to:

- the need to protect the environment, protect human health, prevent interference with legitimate uses of the sea and such other matters as the Scottish Ministers consider relevant;
- the effects of any use intended to be made of the works when constructed; and
- representations received from persons with an interest in the outcome of the application.

10.2 Environmental Matters

10.2.1 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out. Environmental information including the EIA Report has been produced and the applicable procedures regarding publicity and consultation laid down in regulations have been followed. The environmental impacts of the Works have been assessed and the Scottish

Ministers have taken the environmental information into account when reaching their decision.

10.2.2 The Scottish Ministers have considered fully and carefully the Application, the EIA Report and all relevant representations from consultees, third parties, and advice from MSS and TS .

10.3 Main Determinative Issues

10.3.1 The Scottish Ministers, having taken account of all relevant information and regulatory requirements, consider that the main determining issues are:

- The extent to which the Works accords with and is supported by Scottish Government policy and the terms of the NMP and relevant local Works plans;
- The transmission of renewable energy and associated policy benefits;
- The main effects of the Works on protecting the environment and human health and preventing interference with the legitimate use of the sea are in summary impacts on:
  - marine mammals, seabirds and diadromous fish including impacts on European sites and European offshore marine sites;
  - benthic ecology, fish and shellfish;
  - commercial fisheries;
  - shipping and navigation; and
  - marine archaeology.

10.4 Scottish Government Policy Context

10.4.1 The NMP, formally adopted in 2015, and reviewed in Spring 2018, provides a comprehensive statutory planning framework for all activities out to 200nm. The Scottish Ministers must take authorisation and enforcement decisions, which affect the marine environment, in accordance with the NMP.

Of particular relevance to the Works are:

- Chapter 4 policies 'GEN 1-21', which guide all works proposals;
- Chapter 6 Sea Fisheries, policies 'FISHERIES 1-3';
- Chapter 11 Offshore Wind and Marine Renewable Energy, policies 'RENEWABLES 1, 3-10';
- Chapter 13 Shipping, Ports, Harbours and Ferries, policies 'TRANSPORT 1 and 6'; and
- Chapter 14 Submarine Cables, policies 'CABLES 1, 2 and 5'.

10.4.2 The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 commits Scotland to reach net zero emissions of all greenhouse gases by 2045, ahead of the UK target of 2050. It includes bold interim targets to reduce emissions by 75% by 2030, against a 1990 baseline, and to reduce

emissions by 90% by 2040. These targets are in line with what is required to meet Scotland's commitments under the 2015 Paris Agreement, to limit global average temperature increases to 1.5 degrees Celsius or less.

10.4.3 The Works will contribute to Scotland's renewable energy targets and will provide wider benefits to the offshore wind industry which are reflected within Scotland's Offshore Wind Policy Statement, which sets a new ambition to achieve up to 11 gigawatt of offshore wind in Scotland by 2030. Offshore wind is seen as an integral element in Scotland's contribution towards action on climate change. Offshore wind also represents one of the biggest opportunities for sustainable economic growth in Scotland for a generation, and an important role in delivering our energy transition. Scotland's ports and harbours present viable locations to service the associated construction and maintenance activities for offshore renewable energy.

10.4.4 Scottish Planning Policy 2014 ("SPP") sets out the Scottish Government's planning policy on renewable energy works. Efficient supply of low carbon and low cost heat and generation of heat and electricity from renewable energy sources are vital to reducing greenhouse gas emissions and can create significant opportunities for communities. Renewable energy also presents a significant opportunity for associated works, investment and growth of the supply chain, particularly for ports and harbours. Communities can also gain new opportunities from increased local ownership and associated benefits.

10.4.5 Whilst the SPP makes clear that the criteria against which applications should be assessed will vary depending upon the scale of the works and its relationship to the characteristics of the surrounding area, it states that these are likely to include: impacts on landscapes and the historic environment; ecology (including birds, mammals and fish); biodiversity and nature conservation; the water environment; communities; aviation; telecommunications; noise; shadow flicker and any cumulative impacts that are likely to arise. It also makes clear that the scope for the works to contribute to national or local economic works should be a material consideration when considering an application.

10.4.6 Scotland's National Planning Framework 3 ("NPF3") sets out the ambition for Scotland to move towards a low carbon country, placing emphasis on the works of onshore and offshore renewable energy. It recognises the significant wind resource available in Scotland, and reflects targets to meet at least 30% of overall energy demand from renewable sources by 2020 including generating the equivalent of at least 100% of gross electricity consumption from renewables with an interim target of 50% by 2015. It also identifies targets to source 11% of heat demand and 10% of transport fuels from renewable sources by 2020.

10.4.7 NPF3 aims for Scotland to be a world leader in offshore renewable energy and expects that, in time, the pace of onshore wind works will be overtaken by the works of marine energy including wind, wave and tidal power.

10.4.8 Our national planning policy, NPF3 and SPP are under review with a consultation and parliamentary consideration of draft policy (draft National Planning Framework 4, which will include Scottish Planning Policy) anticipated shortly. The revised policy will not apply until approved by the Scottish Parliament and adopted. We anticipate that to happen in 2022.

10.5 Impacts of the Works on the environment

Impacts on marine mammals, seabirds and diadromous fish; European sites and European offshore marine sites

10.5.1 The Habitats Regulations require the Scottish Ministers to consider whether the proposed Works would be likely to have a significant effect on a European site or European offshore marine site (either alone or in-combination with other plans or projects), as defined in the Habitats Regulations.

10.5.2 Owing to NatureScot's view that the Works are likely to have a significant effect on some of the qualifying interests of the Outer Firth of Forth and St Andrews Bay complex SPA, the Firth of Forth SPA, the Isle of May SAC, the Firth of Tay and Eden Estuary SAC, the Moray Firth SAC, and the River Teith SAC, MS-LOT, on behalf of the Scottish Ministers, as the "competent authority", was required to carry out an Appropriate Assessment ("AA").

10.5.3 For marine mammals species, the EIA Report concluded that there could be the potential the disturbance of cetaceans and seals from underwater noise as a result of some of the offshore survey activities which is predicted to be of moderate significance, which reduced to minor significance with mitigation.

10.5.4 Although MSS raised some concerns relating to the noise propagation modelling and the way in which the assessment had been completed, this can be revisited during any associated EPS application process.

10.5.5 For the SAC qualifying interests, namely bottlenose dolphin, harbour seal and grey seal, NatureScot advised that there would be no adverse effect on the integrity of the above SACs. The AA considered the conservation objectives, the populations at the sites, the predicted levels of effect and population consequences, and the advice from NatureScot. The Scottish Ministers concluded that the Works, subject to the application of conditions, would not adversely affect the site integrity of the Moray Firth SAC with respect to bottlenose dolphin, the Firth of Tay and Eden Estuary SAC with respect to harbour seal and the Isle of May SAC with respect to grey seal.

10.5.6 For bird species, the main impacts come from disturbance during construction from vessel activity, however NatureScot welcomed the use of a VMP as embedded mitigation and highlighted that within this the vessel operators should be made aware of the SMWWC.

10.5.7 For the SPA qualifying interests, namely the non-breeding waterfowl qualifying features of the Outer Firth of Forth and St Andrews Bay Complex SPA, and the non-breeding wading and waterfowl qualifying features of the Firth of Forth SPA, NatureScot advised that there would be no adverse effect on the integrity of these SPAs. The AA considered the conservation objectives, and the advice from NatureScot. The Scottish Ministers concluded that the Works, subject to the application of conditions, would not adversely affect the site integrity of the Outer Firth of Forth and St Andrews Bay Complex SPA, and the Firth of Forth SPA.

10.5.8 For diadromous fish, NatureScot advised that that there is no evidence currently available to confirm that EMF effects may or may not disrupt migratory pathways, and that disturbance could affect these species.

10.5.9 For the SAC qualifying features, namely Atlantic salmon, sea and river lamprey of the River Teith SAC, NatureScot advised that there would be no adverse effect on the integrity of the SAC. The AA considered the conservation objectives, and the advice from NatureScot. The Scottish Ministers concluded that the Works, subject to the application of conditions, would not adversely affect the site integrity of the River Teith SAC.

10.5.10 Conditions requiring the Applicant to prepare, consult on and adhere to a CMS, MPCP, CoP, OMP, EMP, VMP, and CaP have been attached to the Marine Licence to mitigate potential concerns.

10.5.11 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the responses of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on marine mammals, seabirds, diadromous fish, European sites or European offshore marine sites which would require a marine licence to be withheld.

Impacts on benthic ecology, fish and shellfish

10.5.12 In relation to benthic ecology, MSS raised some concerns in relation to the impact on PMFs and on the Firth of Forth Banks Complex ncMPA; however, NatureScot advised that no further assessment was required in relation to the ncMPA. In relation to PMFs, NatureScot advised that significant disturbance effects are unlikely due to the short term localised nature of the cable installation, operation, maintenance and repair and decommissioning activity.

10.5.13 The EIA Report concluded that there would be no significant effects from the Works on fish and shellfish receptors. Although MSS initially raised some concerns in relation to potential effects of EMF on nephrops, crab and lobster, following clarification from the Applicant, MSS agreed that any effects were not significant.

10.5.14 Conditions requiring the Applicant to prepare, consult on and adhere to a CMS, EMP and CaP have been attached to the Marine Licence to mitigate potential concerns, as well as conditioning an appropriate contribution to strategic monitoring of EMF.

10.5.15 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the responses of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on benthic ecology, or fish and shellfish which would require a marine licence to be withheld.

Impacts on commercial fisheries

10.5.16 The EIA Report concluded that there would be no significant effect on commercial fisheries

10.5.17 FMA Pittenweem, the SFF, the U10M Association and Williamson Bros Shellfish Ltd did not agree with the conclusions of the EIA Report, with each of these organisations objecting to the Application. These organisations highlighted, amongst other things, impacts on the local fleet which they considered to be significant and the importance of engagement with the industry in planning over-trawl surveys, in addition to compensation being required.

10.5.18 To mitigate concerns raised, conditions requiring the Applicant to prepare, consult and adhere to a FMMS and CaP, will be attached to the Marine Licence, alongside a CMS, DP, DSLP, OMP, VMP and NSP. Survey methodologies and planning (inspection, over trawl, post-lay) for the cables through their operational life must be included in the CaP. A condition requiring a FLO to establish and maintain effective communications between the Applicant, its contractors and sub-contractors, and fishermen and other users of the sea during the construction of the Works will be added to the Marine Licence. Conditions requiring the Applicant to participate in the FTCFWG, and Scotland's Marine Energy Renewable Research Programme, will also be attached to the Marine Licence to mitigate concerns regarding commercial fisheries.

10.5.19 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the responses of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on commercial fisheries which would require a marine licence to be withheld.

Impacts on shipping and navigation

10.5.20 The EIA Report concluded that the potential impacts of the Works on shipping and navigation were tolerable, both from the Works alone and

cumulatively with other projects. The MCA advised a number of conditions which will be attached to the Marine Licence.

10.5.21 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the responses of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on shipping and navigation which would require a marine licence to be withheld.

Impacts on marine archaeology

10.5.22 The EIA Report concluded that impacts resulting from any damage or destruction to marine archaeological features were not significant.

10.5.23 Conditions requiring the Applicant to prepare, consult on and adhere to, a PAD and WSI have been attached to the Marine Licence.

10.5.24 The Scottish Ministers consider that, having taken into account the information provided by the Applicant, the responses of the consultative bodies, and having regard to the conditions attached, there are no outstanding concerns in relation to the impact of the Works on marine archaeology which would require a marine licence to be withheld.

10.6 Renewable energy generation and associated policy benefits

10.6.1 There are multiple benefits associated with the Works, including:

a) The reduction in emissions of carbon dioxide, nitrogen oxides, and sulphur dioxide during the operational phase equivalent to the annual emissions of carbon dioxide, nitrogen oxides, and sulphur dioxide from traditional thermal generation sources;

b) Improvements to the security of the UK's domestic energy supply through increased energy generation;

c) Reduction in the reliance on fossil fuels; and

d) Providing a contribution towards the ambitious Scottish and UK renewable energy targets.

11 The Scottish Ministers' Determination

11.1 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out, and that the applicable procedures regarding publicity and consultation in respect of the Application have been followed.

11.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated, against the renewable energy

benefits which would be realised. The Scottish Ministers have undertaken this exercise in the context of national and local policies.

11.3 The Scottish Ministers have considered the extent to which the Works accords with and is supported by Scottish Government policy, the terms of the SPP, the NMP, local development plans and the environmental impacts of the Works, in particular: impacts on seabirds, marine mammals and diadromous fish (including impacts on European sites and European offshore marine sites), impacts on benthic ecology, fish and shell fish, impacts on commercial fisheries, impacts on shipping and navigation and impacts on marine archaeology. The Scottish Ministers have also considered the renewable energy benefits of the Works.

11.4 The Scottish Ministers are satisfied that the environmental issues have been appropriately addressed by way of the design of the Works and through mitigation measures, and that the issues which remain are, on balance, outweighed by the benefits of the Works. In particular, the Scottish Ministers are satisfied that the Works will not adversely affect the integrity of the Outer Firth of Forth and St Andrews Bay complex SPA, the Firth of Forth SPA, the Isle of May SAC, the Firth of Tay and Eden Estuary SAC, the Moray Firth SAC, and the River Teith SAC.

11.5 In their consideration of the environmental impacts of the Works, the Scottish Ministers have identified conditions to be attached to the Marine Licence to reduce and monitor environmental impacts. These include requirements for monitoring, CMS, an EMP, OMP and a VMP.

11.6 A condition requiring the appointment of an Environmental Clerk of Works ("ECoW") and defining the terms of the ECoW's appointment has been attached to the Marine Licence. The ECoW will be required to monitor and report on compliance with all licence conditions, monitor that the Works is being constructed in accordance with plans and the terms of the Application, the Marine Licence and all relevant regulations and legislation. The ECoW will also be required to provide quality assurance on the final draft versions of any plans and programmes required under the Marine Licence.

11.7 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion, as required under the 2017 MW Regulations, and the 2007 MW Regulations, is valid.

11.8 The Scottish Ministers are satisfied that regard has been given to protecting the environment, protecting human health, and preventing interference with legitimate uses of the sea, as well as other factors considered to be relevant.

11.9 The Scottish Ministers **grant a marine licence** under Part 4 of the 2010 Act, and the 2009 Act, to construct, alter or improve the Works. The draft of the licence is available in Annex 1.

11.10 The embedded mitigation and any additional mitigation identified in the EIA Report has been incorporated into the conditions of the Marine Licence. The conditions also capture monitoring measures required under regulation 22 of the 2007 MW Regulations and regulation 24 of the 2017 MW Regulations.

11.11 In accordance with the 2007 MW Regulations and the 2017 MW Regulations, the Applicant must publicise notice of this determination in the newspapers or other publications where the Application was publicised and provide that a copy of this decision letter may be inspected on the Application website. The Applicant must provide copies of the public notices to the Scottish Ministers.

11.12 Copies of this letter have been sent to the public bodies consulted on the Application, including the relevant planning authorities, NatureScot, SEPA and HES. This letter has also been published on the Marine Scotland Information website.

11.13 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for a marine licence. The rules relating to the judicial review process can be found on the Scottish Courts and Tribunals website.

11.14 Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,

Zoe Crutchfield

Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

08 December 2021

DEFINITIONS AND GLOSSARY OF TERMS

- “AfLs” means Agreements for Lease;
- “AIS” means Automatic Identification System;
- “the Applicant” means Seagreen 1A Ltd. having its registered office at No. 1 Forbury Place, 43 Forbury Road, Reading having its registered company number as 12575047;
- “the Application” means the application letter, marine licence application, and the Environmental Impact Assessment report submitted to the Licensing Authority by the Licensee on 05 March 2021 to construct, alter or improve the Seagreen 1A transmission cable;
- “BT” means British Telecom;
- “CaP” means Cable Plan;
- “CES” means Crown Estate Scotland;
- “CMS” means Construction Method Statement;
- “CoP” means Construction Programme;
- “Decommissioning of the Works” means removal of the Works from the seabed, demolishing or dismantling the Works;
- “DP” means Decommissioning Programme;
- “Decommissioning Programme” means the programme for decommissioning the Works, to be submitted by the Licensee to the Licensing Authority under section 105(2) of the Energy Act 2004 (as amended);
- “DSLP” means Development Specification and Layout Plan;
- “ECoW” means the Environmental Clerk of Works;
- “EIA Report” means Environmental Impact Assessment Report;
- “EMF” means “Electromagnetic Field”;
- “EMP” means the Environmental Management Plan;
- “ERCoP” means Emergency Response Co-operation Plan;
- “EPS” means “European Protected Species”;
- “FLO” means “Fisheries Liaison Officer;
- “FLOWW” means “Fishing Liaison with Offshore Wind and Wet Renewables Group”;
- “FMA” means “Fishermen’s Mutual Association;
- “FMMS” means Fisheries Management and Mitigation Strategy;
- “FTCFWG” means Forth and Tay Commercial Fisheries Working Group;
- “HES” means Historic Environment Scotland;
- “HGV” means Heavy Goods Vehicle;
- “HRA” means Habitats Regulations Appraisal;
- “ICOL” means Inch Cape Offshore Limited;
- “IMO” means International Maritime Organisation;
- “km” means kilometres;
- “the Licensee” means Seagreen 1A Ltd. having its registered office at No. 1 Forbury Place, 43 Forbury Road, Reading having its registered company number as 12575047
- “MCA” means Maritime and Coastguard Agency;

- “MOD” means Ministry of Defence;
- “MPCP” means Marine Pollution Contingency Plan”;
- “MS-LOT” means Marine Scotland – Licensing Operations Team;
- “MSS” means Marine Scotland Science;
- “ncMPA” means nature conservation Marine Protected Area;
- “NLB” means Northern Lighthouse Board;
- “nm” means nautical miles;
- “NMP” means National Marine Plan
- “NnGOWL” means Neart na Gaoithe Offshore Wind Limited;
- “NPF” means National Planning Framework;
- “NSP” means Navigational Safety Plan;
- “NtM” means Notice to Mariners;
- “PAD” means Protocol for the Archaeological Discovery;
- “OMP” means the Operation and Maintenance Programme;
- “PAM” means Passive Acoustic Monitoring;
- “PMF” means Priority Marine Species;
- “RSPB” means the Royal Society for the Protection of Birds;
- “RYA” means Royal Yachting Association Scotland;
- “SAC” means Special Area of Conservation;
- “SEPA” means Scottish Environment Protection Agency;
- “SFF” means Scottish Fishermen’s Federation;
- “SMWWC” means the Scottish Marine Wildlife Watching Code;
- “the Marine Licence” means the marine licence applied for and issued in respect of the construction, alteration or improvement of the Works by the Applicant;
- “the Project” means the Seagreen Alpha and Seagreen Bravo Offshore Wind Farms;
- “the Site” means the area delineated red line in Figure 1 of this decision notice;
- “SPA” means Special Protection Area;
- “SPP” means Scottish Planning Policy;
- “the Works” means the Seagreen 1A export cable associated with the Project ;
- “TS” means Transport Scotland;
- “U10M Association” means the 10 Metre and Under Association;
- “UKHO” means United Kingdom Hydrographic Office;
- “VMP” means the Vessel Management Plan; and
- “WSI” means Written Scheme of Investigation.

Legislation

- “the 1994 Habitats Regulations” means the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended);
- “the 2007 MW Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended);
- “the 2017 MW Regulations” means the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended);
- “the 2009 Act” means the Marine and Coastal Access Act 2009

- “the 2010 Act” means the Marine (Scotland) Act 2010.
- “the Habitats Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017 and the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

Annex 1 – Marine Licence

Please refer to separate attached document.