

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO REMOVE ANY SUBSTANCE OR OBJECT FROM THE SCOTTISH MARINE AREA

Licence Number: **MS-00010436**

The Scottish Ministers (hereinafter referred to as "the Licensing Authority") hereby grant a marine licence authorising:

European Marine Energy Centre Ltd
The Charles Clouston Building
Orkney Research and Innovation Campus
Back Road
Stromness
Orkney
KW16 3AW

to remove any substance or object as described in Part 2. The licence is subject to the conditions set out, or referred to, in Part 3.

The licence is valid from **16 November, 2023** until **01 July, 2028**

Signed:
Emma Lees

For and on behalf of the Licensing Authority

Date of issue: 15 November, 2023

1. PART 1 - GENERAL

1.1 Interpretation

In the licence, terms are as defined in Section 1, 64 and 157 of the Marine Scotland Act 2010, and

- a) "**the 2010 Act**" means the Marine (Scotland) Act 2010;
- b) "**Licensed Activity**" means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- c) "**Licensee**" means European Marine Energy Centre Ltd
- d) "**Mean High Water Springs**" means any area submerged at mean high water spring tide;
- e) "**Commencement of the Licensed Activity**" means the date on which the first vehicle or vessel arrives on the site to begin carrying on any activities in connection with the Licensed Activity;
- f) "**Completion of the Licensed Activity**" means the date on which the Licensed Activity has been installed in full, or the Licensed Activity has been deemed complete by the Licensing Authority, whichever occurs first;

All geographical co-ordinates contained within the licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless otherwise stated.

1.2 Contacts

All correspondence or communications relating to the licence should be addressed to:

Marine Directorate - Licensing Operations Team
375 Victoria Road
Aberdeen
AB11 9DB
Email: MS.Marinelicensing@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied itself that there are no barriers or restrictions, legal or otherwise, to the carrying on of the Licensed Activities in connection with the licensed activity. The issuing of the licence does not absolve the Licensee from obtaining such other authorisations and consents, which may be required under statute.

1.4 Variation, suspension, revocation and transfer

Under section 30 (1) of the 2010 Act the Licensing Authority may by notice vary, suspend or revoke the licence granted by them if it appears to the Licensing Authority that there has been a breach of any of its provisions. For any such other reason that appears to be relevant to the Licensing Authority under section 30(2) or (3) of the 2010 Act. Under the 2010 Act variations, suspensions, revocations and transfers of licences are subject to the procedures set out in section 31 of the Act.

Under section 30 (7) of the 2010 Act, on an application made by a licensee, the Licensing Authority may vary a licence if satisfied that the variation being applied for is not material.

Under section 30 (8) of the 2010 Act, on an application made by the licensee, the Licensing Authority may transfer the licence from the Licensee to another person.

1.5 Breach of requirement for, or conditions of, licence

Under section 39 of the 2010 Act it is an offence to carry on a Licensable Marine Activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

1.6 Defences: actions taken in an emergency

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that –
the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure ('force majeure'), and
that the person took steps within a reasonable time to inform the Licensing Authority as set out in section 40(2) of the 2010 Act.

1.7 Offences relating to information

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or the provisions of this licence.

1.8 Appeals

Under Regulation 3(1) of the Marine Licensing Appeals (Scotland) Regulations 2011 a person who has applied for a marine licence may by summary application appeal to against a decision taken by the Licensing Authority under section 71(1)(b) or (c) or (5) of the Act.

2. PART 2 – PARTICULARS

2.1 Agent

As per Licensee

2.2 Location of the Licensed Activity

Berth 4, Fall of Warness, European Marine Energy Centre ("EMEC"), Orkney,

59° 09.590' N 02° 50.801' W
59° 09.740' N 02° 48.840' W
59° 10.010' N 02° 48.550' W
59° 08.370' N 02° 47.010' W
59° 07.566' N 02° 47.738' W
59° 07.860' N 02° 49.110' W
59° 07.910' N 02° 49.830' W

As shown in Annex One.

2.3 Description of the Licensed Activity

Removal of the OpenHydro research platform from the seabed at Berth 4, Fall of Warness Tidal Test Site, EMEC, Orkney

As described in the application dated 26 May, 2023 and correspondence submitted in support of the application.

2.4 Descriptions of the substances or objects to be removed

The licence authorises the removal of the undernoted substances and objects required in connection with the licensed activity, subject to the maximum amounts as specified below:

Substances to be removed:

OpenHydro research platform comprised of the following:

- Steel/Iron (100 tonnes)
- Concrete (26 tonnes)

2.5 Contractor and Vessel Details

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 In the event of any breach of health and safety or environmental obligations relating to the Licensed Activity during the period of the licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority within 24 hours of the incident occurring. Confirmation of remedial measures taken and/or to be taken to rectify the breach must be provided, in writing, to the Licensing Authority within a period of time to be agreed by the Licensing Authority.

3.1.2 If governmental assistance is required (including UK governmental assistance or the assistance of any UK devolved government) to deal with any emergency arising from:

- a) the failure to mark and light the works as required by the licence;
- b) the maintenance of the works; or
- c) the drifting or wreck of the works, to include the broadcast of navigational warnings

then the Licensee is liable for any expenses incurred in securing such assistance.

3.1.3 The Licensee must ensure that the Licensed Activity is only carried out at the location of the Licensed Activity specified in Part 2 of the licence.

3.1.4 The Licensee must apply to the Northern Lighthouse Board for a Statutory Sanction for the discontinuation of the Aids to Navigation installed on the platform via navigation@nlb.org.uk.

3.1.5 Except where it is not relevant to the provisions of this licence, the Licensee must ensure that all personnel and vessels involved with the Licensed Activity adhere to the guidelines within the Scottish Marine Wildlife Watching Code.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must notify the Licensing Authority in writing of the name and address of any agent, contractor or sub-contractor not already listed in Part 2 of the licence being used to carry out any Licensed Activity listed in Part 2 of the licence. Such notification must be received by the Licensing Authority no less than 24 hours before the Commencement of the Licensed Activity.

3.2.2 The Licensee must provide the name and function of any agent, contractor or sub-contractor appointed to undertake the Licensed Activities, as soon as is reasonably practicable prior to the Licensed Activities commencing.

3.2.3 The Licensee must issue local notification to marine users – including fisherman’s organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity. This must be issued at least 5 days before the Commencement of the Licensed Activity.

3.2.4 The Licensee must ensure that HM Coastguard National Maritime Operations Centre, in this case zone2@hmcg.gov.uk and renewables@hmcg.gov.uk, is made aware of the Licensed Activity prior to commencement. A copy of the notification must be sent to the Licensing Authority within 5 working days of the notification being sent.

3.2.5 The Licensee must, prior to and no less than seven calendar days before the Commencement of the Licensed Activity, notify the Licensing Authority, in writing, of the date of Commencement of the Licensed Activity authorised under this licence.

3.3 During the Licensed Activity

3.3.1 Only those persons acting on behalf of, and authorised by, the agent or the Licensee shall undertake the Licensed Activity.

3.3.2 The Licensee must ensure that any debris or waste materials arising during the course of the Licensed Activity are removed for disposal at an approved location above the tidal level of Mean High Water Springs.

3.3.3 The Licensee must ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:

- a) the premises of the Licensee;
- b) the premises of any agent acting on behalf of the Licensee; and
- c) the site of the Licensed Activity.

3.3.4 The Licensee must ensure that a copy of the licence is given to each contractor and sub-contractor employed to undertake the Licensed Activity.

3.3.5 The Licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the Licensed Activity.

3.3.6 The Licensee must ensure appropriate steps are taken to minimise damage to the seabed by the Licensed Activity.

3.3.7 Any person authorised by the Licensing Authority must be permitted to inspect the site at any reasonable time.

3.3.8 The Licensee must ensure that a 500m exclusion zone is applied around the islands of Seal Skerry (Eday) and Muckle and Little Green Holm.

3.3.9 The Licensee must ensure that the Licensed Activity is undertaken in accordance with the OpenHydro Platform Decommissioning Programme dated May 2023 submitted in support of the application.

3.4 Upon Completion of the Licensed Activity

3.4.1 If a new licence is required, the Licensee must make an application at least fourteen weeks before the expiry date of the licence. This licence shall not continue in force after the expiry date of 01 July 2028.

3.4.2 The Licensee must ensure the seabed is returned to the original profile, or as close as reasonably practicable, following the Completion of the Licensed Activity.

3.4.3 The Licensee must undertake a survey of the site following the removal of all substances and submit the results of the survey, together with a written report, detailing the substances removed during the Licensed Activity, to the Licensing Authority. The written report must be submitted to the Licensing Authority no later than one month after Completion of the Licensed Activity.

3.4.4 The Licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: sdr@ukho.gov.uk; tel.: 01823 484444) of the Completion of the Licensed Activity no later than 10 working days after completion. Such notification must include latitude and longitude coordinates in WGS84 (ETRS89) datum of the works on and/or above the seabed, any changes to engineer drawings, post dredge surveys, details of new or changed aids to navigation where applicable in order that all necessary amendments to nautical publications are made. A copy of the notification must be sent to the Licensing Authority within 5 working days of the notification being sent.

NOTES

1. You are deemed to have satisfied yourself that there are no barriers, legal or otherwise, to the carrying out of the licensed activity. The issue of the licence does not absolve the licensee from obtaining such authorisations, consents etc which may be required under any other legislation.
2. In the event that the licensee wishes any of the particulars set down in the Schedule to be altered, the licensing authority must be immediately notified of the alterations. It should be noted that changes can invalidate a licence, and that an application for a new licence may be necessary.