

# Appendix 1 - Consultation Responses

Historic  
Environment  
Scotland



HISTORIC  
ENVIRONMENT  
SCOTLAND

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By email to:

[MD.MarineRenewables@gov.scot](mailto:MD.MarineRenewables@gov.scot)

Marine Directorate (Marine Renewables)  
Marine Laboratory  
375 Victoria Road  
Aberdeen  
AB11 9DB

Longmore House  
Salisbury Place  
Edinburgh  
EH9 1SH

Enquiry Line: 0131 668 8716  
[HMConsultations@hes.scot](mailto:HMConsultations@hes.scot)

Our case ID: 300030951  
Your ref: SCR-0097  
22 May 2025

Dear Marine Directorate

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

Fall of Warness Tidal Test Site, Eday, Orkney - European Marine Energy Centre - Extension to Fall of Warness Section 36 Consent  
Request for Screening Opinion

Thank you for consulting us on this Environmental Impact Assessment (EIA) screening request, which we received on 12 May 2025. This letter contains our comments for our historic environment interests. That is World Heritage Sites, scheduled monuments and their setting, category A-listed buildings and their setting, inventory gardens and designed landscapes, inventory battlefields and historic marine protected areas.

The relevant local authority archaeological and conservation advisors will also be able to offer advice on historic environment impacts. This may include topics covered by [our advice-giving role](#), and also other topics such as unscheduled archaeology, category B and C listed buildings, and conservation areas.

### Our advice

We have not identified any potentially significant effects on the historic environment and therefore have no reason to consider the proposals to be EIA development.

We hope this is helpful. If you would like to submit more information about this or any other proposed development to us for comment, please send it to our consultations mailbox, [hmconsultations@hes.scot](mailto:hmconsultations@hes.scot). If you have questions about this response, please contact Jessica Malone at [jessica.malone@hes.scot](mailto:jessica.malone@hes.scot).

Yours sincerely

### Historic Environment Scotland

Historic Environment Scotland – Longmore House, Salisbury Place, Edinburgh, EH9 1SH  
Scottish Charity No. **SC045925**  
VAT No. **GB 221 8680 15**

Orkney Islands  
Council

**SCR-0097 – European Marine Energy Centre – Extension to Fall of Warness Section 36 Consent, Fall of Warness Tidal Test Site, Orkney**

The application form highlights that since the initial site-wide Environmental Impact Assessment in 2005 and a further Environmental Appraisal in 2014, the North Orkney and Scapa Flow Special Protection Areas (SPAs) have been designated.

The Falls of Warness EMEC test site was operational for many years prior to the designation of these SPA designations in July 2016 and the proposed extension to the Marine Licence will not result in any change to existing consented activities. Therefore, the test site activities form part of the pre-designation baseline level of activity for the North Orkney and Scapa Flow SPAs and an assessment of likely significant effects on the features of these SPA is not considered necessary.

In line with the 'Review of new EIA regulations' section in the application, OIC Marine Planning agree with the conclusion that the requirement for an assessment of population and human health is adequately covered by the existing assessment of socio-economic impacts.

Marine Planning have no other comments on the extension of the Marine Licence.

NatureScot  
(30 May 2025)

**From:**  
**To:** [MD Marine Renewables](#)  
**Cc:**  
**Subject:** RE: SCR-0097 – European Marine Energy Centre – Extension to Fall of Warness Section 36 Consent – Consultation on Request for Screening Opinion – Response Required by 02 June 2025  
**Date:** 30 May 2025 12:26:54  
**Attachments:** [image001.png](#)

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Dear Anna,

Thank you for consulting NatureScot on the request for a Screening Opinion submitted by EMEC for the proposed Section 36 consent extension for the Fall of Warness tidal test site.

We have reviewed the Screening Request letter provided (dated 21 March 2025) and include our advice below.

### **Proposal**

EMEC currently hold a Section 36 consent for the Fall of Warness tidal test site. In 2023 the existing S36 was varied in order to extend consent for a further three years, until March 2026. EMEC now seek an extension for a further 2 years - until March 2028.

EMEC propose that extending the duration of the existing S36 consent for the test site does not require an EIA. This is based on there being no proposed changes to the site activities or project envelope, therefore meaning there is no change to the environmental impacts assessed in the original EA<sup>1</sup>.

We note the anticipated forthcoming application for a new S36 consent to cover the Fall of Warness site; this will seek to increase the generating capacity of the site to 50 MW and project duration up to 2040 (as per Scoping Report: dated May 2022, and Scoping Opinion: dated 07 December 2022). The proposed S36 consent variation set out above will allow continued use of the site in the interim period.

In addition, we also note that several marine licences for deployment of tidal devices at the Fall of Warness (as granted in 2024; e.g. Orbital, SEASTAR, OCEANSTAR and Magallanes projects) include conditions/direction relevant to the aforementioned new S36 application. These conditions require careful consideration in the interim period, particularly in relation to the current Project Design Envelope (PDE). During this interim period we would appreciate continued dialogue with EMEC regarding the status of deployments and activities at the test site.

Our advice below is relevant to the requested 2-year time extension for the existing S36 consent only. We highlight that considerations required regarding the application for a new S36 consent to expand the sites activities (as noted above) differ and are not covered here.

### **NatureScot advice**

It is our understanding that no changes to the existing consented Project Design Envelope are proposed. In addition, we assume that only devices which are in-line with the current

PDE will be deployed within the 2-year extension period (noting again our point above regarding individual marine licences consented in 2024). Therefore, on this basis, we advise there is no need to undertake an EIA for the 2-year time extension of the existing S36 consent. However, if the understanding set out above is incorrect then please let us know so we can advise whether an environmental assessment is required.

To note, in 2022 we provided advice on the previous time-extension variation for the Fall of Warness test site (advice issued 28 June 2022); based on the above understanding, we consider that our detailed advice regarding the North Orkney and Scapa Flow SPAs remains the same in this instance.

I trust this is of assistance, please contact me if you require any further advice.

Kind regards,

Clare

#### Reference

<sup>1</sup> [https://marine.gov.scot/sites/default/files/environmental\\_appraisal\\_1.pdf](https://marine.gov.scot/sites/default/files/environmental_appraisal_1.pdf)

#### **Clare McCarty** (she/her) | **Marine Sustainability Adviser**

Correspondence address: NatureScot | Battleby House | Redgorton | Perth | PH1 3EW | [

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NatureScot  
(28 June 2022)

**From:** [Jenna Lane](#)  
**To:** [MS Marine Renewables](#)  
**Subject:** RE: European Marine Energy Centre – Screening of Proposed Section 36 Consent Variation – Fall of Warness Tidal Test Site, Orkney - Response required by 30 June 2022  
**Date:** 28 June 2022 11:10:03

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Dear Emma,

**SCREENING OPINION ON THE PROPOSED SECTION 36 CONSENT VARIATION APPLICATION IN RESPECT OF THE EUROPEAN MARINE ENERGY CENTRE, FALL OF WARNESS TIDAL TEST SITE, ORKNEY**

Thank you for consulting NatureScot on the request for Screening Opinion on the proposed Section 36 consent variation application for the EMEC Fall of Warness tidal site.

We have reviewed EMEC's Screening Request document and our advice is outlined below.

**Proposal**

EMEC currently holds a Section 36 consent for Fall of Warness which is valid until March 2023. EMEC is seeking to extend this by three years, to March 2026.

EMEC considers that a further EIA for the extension of Section 36 consent duration is not required. This is based on the proposal having no change to the site activities or project envelope, meaning there is no change to the environmental impacts assessed in the original EA. EMEC has submitted a separate Scoping report for a new Section 36 consent for Fall of Warness, looking to increase the generating capacity to 50 MW and extend the timeline to 2040. This proposed Section 36 consent variation will allow continued use of the site in the interim period.

**Ornithology Advice**

In the original Appropriate Assessment for the EMEC Fall of Warness tidal site, prepared by MS-LOT, the then draft North Orkney and Scapa Flow SPAs were not included. This is because they were not subject to policy protection prior to commencement (in 2016) of the public consultation on marine SPAs, when they became proposed SPAs (pSPAs). Both sites were subsequently classified, but with amended boundary and reduced qualifying features lists, on 16<sup>th</sup> February 2022.

Neither the Scapa Flow nor the North Orkney SPAs overlap the boundary of the Fall of Warness test site. Unlike the breeding seabird features of seabird colony SPAs, wintering waterfowl features (various divers, grebes, seaducks and shags) of marine SPAs are presumed to be resident within the site boundary. Hence, these features of marine SPAs do not generally have connectivity to developments/activities operating outwith the SPA boundary, unless there is some impact pathway arising from the development that could affect the conservation objectives within the SPA. The most common example is the transit of associated vessels through a marine SPA and in some instances such movements have potential to cause significant disturbance to or displacement of sensitive bird features. In this instance there is connectivity between the Fall of Warness test site and the North Orkney SPA associated with passage of vessels operating at the site through the SPA from Kirkwall/Hatston.

There could additionally be indirect connectivity for breeding red-throated divers, which are a feature of both Scapa Flow and North Orkney SPAs. These birds nest at freshwater lochs or lochans, but feed at sea, generally within a 10km radius of their nest site. The majority of red-throated divers foraging within the two Orkney marine SPAs will be features of either the Hoy or Orkney Mainland Moors terrestrial SPAs, with the latter being of relevance to the Fall of Warness site (given the distance). Any potential impacts on red-throated divers foraging in the North Orkney SPA should hence have been covered by the original Appropriate Assessment.

Irrespective of potential impact pathways, the key point in this particular instance is that the Fall of Warness test site was already consented when the North Orkney pSPA was consulted on and

granted policy protection. Consequently, the consented activities associated with the test site are considered to form part of the baseline conditions of the pSPA, such that no additional management was deemed to be required. Please see the [2016 Advice to Support Management](#) document, which formed part of the consultation on the North Orkney pSPA, for details.

There are no other SPAs classified since the original consent that require consideration.

From the above, we conclude no Likely Significant Effect (LSE) with respect to either the Scapa Flow or North Orkney SPAs arising from the proposed variation to the Section 36 consent for operation of the Fall of Warness test site. This conclusion is based on the variation not representing any proposed change to site location, extent, activities or overall project envelope from the original consent, which predated the application of policy protection to these sites.

Please note however that this is fundamentally different to the considerations that may be required for the parallel Scoping of a new Section 36 consent for expansion of activity in the site.

#### **General advice**

There are no other changes to designated sites, natural heritage interests or development projects in the vicinity of Fall of Warness which could affect the predicted potential impacts. Taking this into account alongside the proposal having no change to the site activities or project envelope, NatureScot therefore agree that a further EIA for the extension of Section 36 consent duration is not required.

Please contact me if you require any further advice.

Best wishes,

**Jenna Lane | Marine Sustainability Adviser | Sustainable Coasts & Seas**

**NatureScot** | Home Worker | **t:** 01463 725149 | **m:**

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**I work compressed hours, 06:30 – 16:15, Monday-Thursday. I don't work Fridays.**