

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

**LICENCE FOR THE CONTINUED DEPOSIT AND REMOVAL OF MARINE RENEWABLES
SUBSTANCES OR OBJECTS IN THE SCOTTISH MARINE AREA**

Licence Number: **06695/19/0**

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

**Sustainable Marine Energy Ltd.
La Belle Esperance
The Shore
Leith
Edinburgh
EH6 6QW**

Under the Marine (Scotland) Act 2010;

1) to use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed within the Scottish marine area.

required in the execution of the works (including removal and decommissioning) described in Part 2 of the Schedule attached to this licence. The issue of this licence is subject to conditions as set out in Part 3 of the Schedule.

This licence remains in force from **28 January 2019** to **31 December 2019** or until the Works have been decommissioned in accordance with an approved Decommissioning Programme prior to this date. Upon the issuing of this licence, the deposits are no longer permitted under the authority of licence numbers 06211/17/1 and 05684/17/1.

Signed:

Roger May

For and on behalf of the Licensing Authority

Date of issue: **28 January 2019**

1. PART 1 – GENERAL

1.1 Interpretation

In this licence, unless otherwise stated, terms are as defined in sections 1, 64 and 157 of the Marine (Scotland) Act 2010, and,

- a) **“Commencement of the Works”** means the date on which the first vessel arrives on the Site to begin carrying out the Licensable Marine Activity in connection with the removal of the Works, as described in Part 2 of this licence;
- b) **“Completion of the Works”** means the date on which the Works have been removed, or the Works have been deemed complete by the Licensing Authority;
- c) **“Decommissioning Programme”** means the programme for decommissioning the Works, to be submitted by the Licensee to the Secretary of State under section 105(2) of the Energy Act 2004 (as amended);
- d) **“Decommissioning of the Works”** includes removal of the Works from the seabed, demolishing the Works or dismantling the Works;
- e) **“Licensee”** means Sustainable Marine Energy Ltd. having its registered offices at The White Building, 1-4 Cumberland Place, Southampton, Hampshire, England, SO15 2NP and having its registered number as 08139012;
- f) **“Licensable Marine Activity”** means the activities listed in section 21 of the 2010 Act authorised under this licence;
- g) **“MHWS”** means mean high water spring tide.
- h) **“the 2010 Act”** means the Marine (Scotland) Act 2010;
- i) **“the Application”** means the marine licence application and supporting information submitted to the Licensing Authority by Sustainable Marine Energy Ltd., on 27th April 2018;
- j) **“the Licensing Authority”** means the Scottish Ministers;
- k) **“the Site”** means the area outlined in the figure contained in Part 4 of this licence and
- l) **“the Works”** means the removal of renewable energy device steel support structure and associated ballast as described in Part 2 of this licence;

All geographical co-ordinates contained within this licence are in latitude and longitude format World Geodetic System 84 (“WGS84”).

1.2 Contacts

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

Marine Scotland
Licensing Operations Team
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB

Email: MS.MarineRenewables@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed activities in connection with the Works. The issuing of this 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 this 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 this 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 out 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 –

- (a) 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
- (b) 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 the sheriff of any sheriffdom against a decision taken by the Licensing Authority under section 29(1) of the 2010 Act.

2. PART 2 – THE WORKS

2.1 Title of the Works

The title of the works to which this licence relates to is the removal of a steel monopile and rock armour bags as deposited under marine licence 04482/14/0, and allowed to remain under marine licence 06211/17/1, and as specified in Part 2 of this licence.

2.2 Description of the Works

The description of the Works to which this licence relates to is the removal of a renewable energy device steel monopile.

These works will comprise of the following components:

- 1 Steel Monopile 87 tonnes, 23.88 m x 2 m
- Grout for Monopile 27 tonnes
- Rock Armour Bags up to 56 tonnes
- Rubber Grouting Hoses 100 kg
- Export Cable/connection 150m (approximately 3 tonnes)
- Dyneema Mooring Lines 250m (approximately 160 kg)

2.3 Location of the Works

Located at Berth 7 within the European Marine Energy Centre (EMEC) tidal test facility at the Fall of Warness, situated West of the island of Eday in a narrow channel between the Westray Firth and Stronsay Firth, approximately 16 km from the Orkney Mainland, within the area bounded by joining the following points:

Fall of Warness lease area:

59° 09.780' N	002° 47.890' W	59° 09.250' N	002° 48.400' W
59° 08.360' N	002° 47.760' W	59° 08.370' N	002° 47.440' W
59° 08.370' N	002° 47.010' W	59° 07.600' N	002° 47.570' W
59° 07.860' N	002° 49.110' W	59° 07.820' N	002° 49.500' W
59° 07.910' N	002° 49.830' W	59° 09.590' N	002° 50.800' W
59° 09.740' N	002° 48.840' W	59° 10.010' N	002° 48.550' W

Berth 7 Area:

59° 09.281' N	002° 50.024' W	59° 09.120' N	002° 50.023' W
59° 09.282' N	002° 49.633' W	59° 09.102' N	002° 49.633' W

2.4 Deposits and Removals

This licence authorises the continued deposit of the undernoted objects in connection with the Works until full removal in accordance with the decommissioning plan, subject to the maximum amounts as specified below:

ITEMS TO BE DECOMMISSIONED

- 1 Steel Monopile 87 tonnes, 23.88 m x 2 m
- Grout for Monopile 27 tonnes
- Rock Armour Bags up to 56 tonnes
- Rubber Grouting Hoses 100 kg
- Export Cable/connection 150m (approximately 3 tonnes)
- Dyneema Mooring Lines 250m (approximately 160 kg)

2.5 Persons responsible for the removal of the substances or objects

The operators and vessels engaging in the Works must be notified to the Licensing Authority under condition 3.1.2 prior to their engagement in the Works:

Name of Vessel Registration	Operator	Type(s)
TBC	TBC	TBC

2.6 Persons acting on behalf of the Licensee

The name and address of any agents, contractors or sub-contractors appointed to carry out any part, or all, of the Works must be notified to the Licensing Authority under condition 3.1.2 prior to their engagement in the Works:

Role	Company Name	Address	Contact Name
TBC	TBC	TBC	TBC

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 Compliance with the Licence and Application

The Licensee must remove the Works in accordance with this Licence and the Application.

Reason: *To ensure compliance with the marine licence and the application for the marine licence.*

3.1.2 Licence conditions binding other parties

All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the Works for which this licence has been granted in relation to those licensed activities authorised under item 5 in section 21(1) of the 2010 Act whether or not this licence has been transferred to that person.

Reason: *To safeguard the obligations of the licence, in accordance with s.29(5) of the Marine (Scotland) Act 2010.*

3.1.3 Force Majeure

Should the Licensee or any of their agents, contractors or sub-contractors, by any reason of *force majeure* deposit anywhere in the marine environment any substance or object, then the Licensee must notify the Licensing Authority of the full details of the circumstances of the deposit within 48 hours of the incident occurring (failing which as soon as reasonably practicable after that period of 48 hours has elapsed). *Force majeure* may be deemed to apply when, due to stress of weather or any other cause, the master of a vessel or vehicle operator determines that it is necessary to deposit the substance or object other than at the Site because the safety of human life or, as the case may be, the vessel, vehicle or marine structure is threatened. Under Annex II, Article 7 of the Convention for the Protection of the Marine Environment of the North-east Atlantic, the Licensing Authority is obliged to immediately report force majeure incidents to the Convention Commission.

Reason: *To provide a defence for the Master to protect himself and his crew in bad weather conditions, in accordance with s.29(2)(a) of the 2010 Act.*

3.1.4 Material alterations to the licence application

The Licensee must, where any information upon which the granting of this licence was based has after the granting of the licence altered in any material respect, notify the Licensing Authority of this fact, in writing, as soon as is practicable.

Reason: *To ensure that the Works are carried out in accordance with the Application documentation, in accordance with s.29(2)(a) of the 2010 Act.*

3.1.5 Submission of plans and specification of studies and surveys to the Licensing Authority

The Licensee must submit plans and the details and specifications of all studies and surveys that are required to be undertaken under this licence in relation to the Works, in writing, to the Licensing Authority for their written approval. Commencement of the studies or surveys and implementation of plans must not occur until the Licensing Authority has given its written approval to the Licensee.

Plans or the specification of studies and surveys prepared pursuant to another consent or licence relating to the Works by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

Reason: *To ensure that the Licensing Authority is kept informed of the progress of the Works, in accordance with s.29(3)(c) of the 2010 Act.*

3.1.6 Submission of reports and notifications to the Licensing Authority

The Licensee must submit all reports and notifications to the Licensing Authority, in writing, as are required under this licence within the time periods specified in this licence. Where it would appear to the Licensee that there may be a delay in the submission of the reports or notifications to the Licensing Authority, then the Licensee must advise the Licensing Authority of this fact as soon as is practicable and no later than the time by which those reports or notifications ought to have been submitted to the Licensing Authority under the terms of this licence.

The reports must include executive summaries, assessments and conclusions and any data must, subject to any rules permitting non-disclosure, be made publically available by the Licensing Authority or by any such party appointed at their discretion.

Reports prepared pursuant to another consent or licence relating to the Works by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

Such reports will include, but not be limited to, Transport Audit sheets, removals sheets and Marine Mammal Observer ("MMO") reports.

Reason: *To ensure that all reports and notifications are submitted within a reasonable timescale after the licence is granted, in accordance with s.29(3)(c) of the 2010 Act.*

3.1.7 Chemical usage

The Licensee must seek prior written approval from the Licensing Authority for any chemicals in an open system which are to be utilised in the construction, operation and maintenance of the Works. Requests for approval must be submitted in writing to the Licensing Authority no later than one month prior to its intended use or such other period as agreed by the Licensing Authority. The Licensee must ensure that no chemicals are used in an open system without the prior written approval of the Licensing Authority.

If the proposed chemical is on the OCNS list, the approval request must include the chemical name, volume or quantity to be used, the OCNS list grouping or rank and the proposed frequency of use.

If the proposed chemical is not on the OCNS list, the approval request must include details of chemical to be used, including safety data sheet, depth and current at the Site, quantities or volumes and the proposed frequency of use.

The Licensee must notify the Licensing Authority of the types of chemicals to be used in a closed containment system prior to use.

The Licensee should take all practicable steps to avoid leakages from a closed containment system into the Scottish marine area. Any such leakages must be reported to the Licensing Authority as soon as practicable.

Reason: To minimise the environmental impact in the event of a release through the use of authorised chemicals in the interest of protecting the environment, in accordance with s.29(2)(b) of the 2010 Act.

3.1.8 Fluorinated greenhouse gases

The Licensee must ensure that all equipment to be utilised in the Works that contains fluorinated greenhouse gases (hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and other greenhouse gases that contain fluorine, listed in Annex I of Regulation (EU) 517/2014 and The Fluorinated Greenhouse Gases Regulations 2015 (the Regulations), or mixtures containing any of those substances) must take precautions to prevent the unintentional release ('leakage') of those gases. They must take all measures which are technically and economically feasible to minimise leakage of fluorinated greenhouse gases.

Where a leakage of fluorinated greenhouse gases is detected, the Licensee must ensure that the equipment is repaired without undue delay.

The Licensee must ensure that all equipment to be utilised in the Works that contains fluorinated greenhouse gases in quantities of 5 tonnes of CO₂ equivalent or more and not contained in foams must ensure that the equipment is checked for leaks in accordance with Annex 4 of the Regulations. Records of leak checks must be kept in accordance with Annex 6 of the Regulations. These records must be submitted to the Licensing Authority annually, and immediately in the event of discovery of any leak.

Where the equipment is subject to leak checks under Article 4(1) of the Regulations, and a leak in the equipment has been repaired, the Licensee must ensure that the equipment is checked by a certified person within one calendar month after the repair to verify that the repair has been effective. In such event, the Licensing Authority must be informed of the date of discovery, date of repair and date of inspection.

Reason: to ensure compliance of the Works with Regulation (EU) 517/2014 and The Fluorinated Greenhouse Gases Regulations 2015, in accordance with s.29(2)(b) of the 2010 Act.

3.1.9 Environmental protection

The Licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to avoid or minimise any damage to the Scottish marine area caused as a result of the undertaking of the licensed activities.

The Licensee must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code where appropriate during all removal activities authorised under this licence.

The Licensee must ensure that any debris or waste material placed below MHWS during the removal of the Works are removed from the Site, as soon as is reasonably practicable, for disposal at a location above the MHWS approved by the Scottish Environment Protection Agency ("SEPA").

The Licensee must ensure that the risk of transferring marine non-native species to and from the Site is kept to a minimum by ensuring appropriate bio-fouling management practices are implemented during the Works.

The Licensee must ensure that if oil based drilling muds are utilised they must be contained within a zero discharge system. Any drill cuttings associated with the use of water-based drilling muds situated within Site of the Works need not be removed from the seabed.

Reason: *To ensure environmental impacts are minimised, in accordance with s.29(2)(b) of the 2010 Act.*

3.1.10 Availability of the licence for inspection

The Licensee must ensure that copies of this licence and any subsequent amendments or variations are available for inspection at any reasonable time by any authorised marine enforcement officer at:

- a) the premises of the Licensee;
- b) the premises of any agent, contractor or sub-contractor acting on behalf of the Licensee;
- c) any onshore premises directly associated with the Works; and
- d) aboard any vessels permitted to engage in the Works.

Reason: *To ensure the licence is available for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.*

3.1.11 Inspection of the Works

Any persons authorised by the Licensing Authority, must be permitted to inspect the Works at any reasonable time. The Licensee must, as far as reasonably practicable, on being given reasonable notice by the Licensing Authority (of at least 72 hours), provide transportation to and from the Site for any persons authorised by the Licensing Authority to inspect the Site.

Reason: *To ensure access to the Site for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.*

3.1.12 Emergencies

If the assistance of a Government Department (to include departments of Administrations other than the Scottish Government) is required to deal with any emergency arising from:

- a) the failure to mark and light the Works as required by this 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.

Reason: *To ensure licensee is aware of financial liabilities, in accordance with s.29(2)(b) of the 2010 Act*

3.2 Conditions specific to the Works

3.2.1 Conditions applicable to all phases of the Works

3.2.1.1 Serious Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the Works during the period of this licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority, including confirmation of remedial measures taken and / or to be taken to rectify the breach, within 24 hours of the incident occurring.

Reason: *To keep the Scottish Ministers informed of any such incidents which may be in the public interest, in accordance with s.29(3)(c) of 2010 Act.*

3.2.1.2 Bunding and storage facilities

The Licensee must ensure suitable bunding and storage facilities are employed to prevent the release of fuel oils and lubricating fluids associated with the plant and equipment into the marine environment.

Reason: *To ensure pollution prevention is undertaken, in accordance with s.29(2)(b) of the 2010 Act.*

3.2.1.3 Restoration of the Site to its original condition

The Licensee must take all reasonable, appropriate and practicable steps to restore the Site to its original condition before the Works were undertaken, or to as close to its original condition as is reasonably practicable, in accordance with the Decommissioning Programme ("DP") to the satisfaction of the Licensing Authority. Should the Works be discontinued prior to Completion of the Works, the Licensee must inform the Licencing Authority in writing of the discontinuation of the Works.

Reason: *To mitigate the effects of the activity on the Site, in accordance with s.29(3)(e) of the 2010 Act.*

3.2.2 During the Removal of the Works

3.2.2.1 Transportation Audit Report

The Licensee must submit to the Licensing Authority a detailed TAR for each calendar month during the construction phase of the Works. The TAR must be submitted within 14 days of the end of each calendar month.

The TAR must include the nature and quantity of all substances and objects deposited and materials used in construction (as described in Part 2 of this licence) in that calendar month. Alterations and updates can be made in the following month's TAR. Where appropriate, nil returns must be provided.

If the Licensee becomes aware of any substances, objects or materials on the TAR that are missing, or becomes aware that an accidental deposit has occurred, the Licensee must notify the Licensing Authority as soon as practicable. The Licensee must undertake such survey as directed by the Licensing Authority to locate the substances, objects and materials. If the Licensing Authority is of the view that any accidental deposits have occurred and should be removed, then the materials must be removed by the Licensee as soon as is practicable and at the Licensee's expense.

Reason: *To confirm that the deposits made were in accordance with the application documentation, in accordance with s.29(3)(c) of the 2010 Act and that any accidental deposits are recovered or charted appropriately in accordance with s.29(3)(c) of the 2010 Act.*

3.2.2.2 Navigational Safety

The Licensee must notify the UK Hydrographic Office ("UKHO") of all decommissioning activities, including a clear statement of the minimum depth of water remaining' after each decommissioning activity, in order that Admiralty Chart BA2562 may be updated.

Notices to Mariners and Local Radio Navigation Warnings in conjunction with Orkney Marine Services (VTS) should be issued prior to decommissioning activities at berth 7, Fall of Warness, clearly stating the nature and duration of the works taking place.

The Licensee must in the case of damage to, or destruction or decay of, the Works notify the Licensing Authority, in writing, as soon as reasonably practicable following such damage, destruction or decay. The Licensee must carry out any remedial action as required by the Licensing Authority, and intimated to the Licensee in writing, which may include any requirement to display aids to navigation, following consultation with the MCA, the NLB or any such advisers as required by the Licensing Authority.

The Licensee must ensure that any vessels permitted to engage in the Works are marked in accordance with the International Rules for the Prevention of Collisions at Sea whilst under way, and in accordance with the UK Standard Marking Schedule for Offshore Installations if the vessel is secured to the seabed.

The Licensee must ensure that no radio beacon or radar beacon operating in the marine frequency bands is installed or used on the Works without the prior written approval of the Office of Communications ("OfCom").

The Licensee must ensure that the navigable depth is not altered by more than 5% referenced to Chart Datum unless otherwise agreed, in writing, with the Licensing Authority in consultation with the MCA and NLB.

Reason: *To reduce the navigational risk to other legitimate users of the sea, in accordance with s.29(2)(b) of the 2010 Act.*

3.2.3 Conditions upon Completion of the Works

3.2.3.1 Date of Completion of the Works

The Licensee must, no later than **1 week** following the Completion of the Works, notify the Licensing Authority, in writing, of the date of Completion of the Works.

Reason: *To inform the Licensing Authority of the completion of the works, in accordance with s.29(3)(c) of the 2010 Act.*

3.2.3.2 Nature and quantity of removed substances and objects

The Licensee must, no later than **1 calendar month** following the Completion of the Works, submit a final audit report, in writing, to the Licensing Authority stating the nature and quantity of all substances and objects removed from below MHWS within the Scottish marine area under the authority of this licence.

Reason: *To confirm that the removals made were in accordance with the Application, in accordance with s.29(3)(c) of the Marine (Scotland) Act 2010.*

3.2.3.3 Post Decommissioning Survey

The Licensee must, no later than **1 calendar month** following the completion of the works, carry out a post removal survey of the area. The survey and subsequent report must be submitted to the Licensing Authority and UKHO, clearly stating the seabed conditions following the removal of the substances and objects from below MHWS within the Scottish marine area, under the authority of this licence.

Reason: *To confirm that the removals made were in accordance with the Application, in accordance with s.29(3)(c) of the Marine (Scotland) Act 2010.*

4. PART 4 – PROJECT LOCATION

Figure 1 – Steel Monopile Location: Berth 7, Fall of Warness, European Marine Energy Centre, Eday, Orkney

