

MARINE SCOTLAND ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT, ALTER OR IMPROVE WORKS IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00008757**

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

**Mr J Clarke
Mocean Energy
Floor 2 Murchison House
10 Max Born Crescent
Edinburgh EH9 3BF**

to construct, alter or improve works 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 **04 March, 2021** until **03 June, 2022**

Signed:

Giulia Agnisola

For and on behalf of the Licensing Authority

Date of issue 03 March, 2021

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 Mr J Clarke
- 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 Scotland
Licensing Operations Team
Marine Laboratory
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

Aquatera
Old Academy
Stromness
Orkney
KW16 3AW

2.2 Location of the Licensed Activity

Deerness, Orkney, within the area bounded by joining points

58° 52.266' N 02° 45.085' W
58° 51.716' N 02° 45.089' W
58° 51.714' N 02° 44.028' W
58° 52.264' N 02° 44.024' W

As shown in Annex One.

2.3 Description of the Licensed Activity

To construct, alter or improve the M100P wave energy converter and moorings.

As described in application dated 30 October, 2019 and correspondence submitted in support of the application.

2.4 Descriptions of the materials to be used during Licensed Activity

This licence authorises the use of the undernoted construction materials required in connection with the licensed activity, subject to the amounts as specified below:

No 1 - M100P Wave Energy Converter
No 2 - Mooring lines
No 2 - Anchors (either 2 x chain clump weight anchors or 2 x drag anchors)

Comprised of:

Steel/Iron - 275 tonne;
Plastic/Synthetic - 275 tonne;
Cable - 200 kg;
Aluminium (stator segments, anodes) - 120 kg;

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Copper - 140 kg;

Rubber - 50 kg.

2.5 Contractor and Vessel Details

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must at all times construct and maintain the Licensed Activity in accordance with this licence, the application and the plans and programmes approved by the Licensing Authority.

3.1.2 All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the works, whether or not this licence has been transferred to that person.

3.1.3 The Licensee must ensure that only the materials, substances or objects listed in Part 2 of the licence are used during the execution of the Licensed Activity and that all materials, substances or objects used during the execution of the Licensed Activity are inert and do not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

3.1.4 The Licensee must ensure that the Licensed Activity does not encroach on any recognised anchorage, either charted or noted in nautical publications, within the licensed area.

3.1.5 In the event of any breach of health and safety or environmental obligations relating to the licensed activity during the period of this 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.

3.1.6 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 both progress and on completion of the the licensed activity supply a copy of the licence, and wherever possible, 'as built plans', in order that all necessary amendments to nautical publications are made.

3.1.7 If it is desired to display any marks or lights not required by the licence then details must be submitted to the Northern Lighthouse Board and its ruling complied with. The display of unauthorised marks or lights is prohibited.

3.1.8 The Licensee must remove the materials, substances or objects from below the level of Mean High Water Springs, or make such alterations as advised by the Licensing Authority, within one month of notice being given by the Licensing Authority.

3.1.9 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 Licensed Activity. 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 Offshore Chemical Notification Scheme list, the approval request must include the chemical name, volume or quantity to be

used, the Offshore Chemical Notification Scheme list grouping or rank and the proposed frequency of use. If the proposed chemical is not on the Offshore Chemical Notification Scheme 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.

3.1.10 No release of chemicals into the marine environment is permitted under this licence. Any incident which may result in the release of chemicals into the marine environment must be reported to the Licensing Authority in line with the breach of health and safety or environmental obligations as stated in condition 3.1.5 of this licence.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must complete and submit a proposed activity form in the online Marine Noise Registry for all Licensed Activities that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than seven days prior to commencement of the Licensed Activity. If any aspects of the Licensed Activity differs from the proposed activity form in the online marine noise registry, the Licensee must complete and submit a new proposed activity form no later than seven days prior to 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 notify the Licensing Authority in writing of the name and address of any 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.

3.2.4 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 the licence.

3.2.5 The Licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre is made aware of the works prior to commencement.

3.2.6 The Licensee must issue a Notice to Mariners in advance of the Commencement of the works, clearly stating the nature and duration of the works.

3.2.7 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.

3.2.8 There must be no Commencement of the works unless a Decommissioning Programme ("DP") has been submitted to and approved in writing by the Licensing Authority. The DP must outline measures for the decommissioning of the works, restoration of the sea bed and will include without limitation, proposals for the removal of the works, the management and timing of the removal and environmental management provisions. The works must be decommissioned in accordance with the approved DP unless otherwise agreed by the Licensing Authority.

3.2.9 The Licensee must no later than three calendar months (or such other period as agreed with the Licensing Authority) prior to the Commencement of the Licensed Activity, provide the Licensing Authority with [Third Party Certification / Third Party Verification] (or a suitable alternative as agreed in writing with the Licensing Authority) for the wave energy device and the mooring arrangements, for the lifespan of the Licensed Activity. Commencement of the Licensed Activity cannot take place until such approval is granted.

3.2.10 The Licensee must, no later than one calendar month prior to commencement of the Licensed Activity, or at an alternative date as agreed with the Licensing Authority, submit an Emergency Response Co-operation Plan ("ERCoP") to the Licensing Authority for its written approval. The ERCoP must be agreed with the Offshore Energy Liaison Officer, HM coastguard, MCA (oelo@mcga.gov.uk).

3.2.11 The Licensee must complete a statutory sanction application for all navigational marking and lighting of the activity and associated infrastructure and submit it to the Northern Lighthouse Board at navigation@nlb.org.uk.

3.3 During the Licensed Activity

3.3.1 The Licensee must ensure that the licensed activity is maintained at all times in good repair.

3.3.2 The Licensee must ensure that only those agents, contractors or sub-contractors notified to the Licensing Authority are permitted to undertake the works and/or licensed activity.

3.3.6 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) site of the Licensed Activity.

3.3.7 The works must be predominantly yellow in colour and fitted with a light flashing yellow once every 5 seconds and visible from all directions. The light should be mounted on the highest point of the superstructure and have a nominal range of 3 nautical miles. A passive radar reflector must be fitted at a similar elevation in order to enhance the radar profile of the device and a yellow "St Andrews Cross" topmark should be installed below the light. The dimensions of this topmark should not be less than 750mm x 150mm. The wave energy converter must be marked by AIS as an Aid to Navigation, transmitting a Type 21 message. A separate AIS licence, issued by OFCOM

will be required.

3.3.8 The Waverider buoy should be yellow in colour, and be fitted with a yellow light, flashing 5 every 20 seconds. No topmark is required for this buoy.

3.3.9 The Licensee must liaise with all local marine stakeholders during the installation to ensure the promulgation of Notice to Mariners regarding the timeframe and nature of works.

3.3.10 The device must be actively monitored during its installation, operation, maintenance and removal phases and any catastrophic failure events must be responded to as described within the approved ERCoP.

3.3.11 The Licensee must ensure the UK Hydrographic Office is provided with all relevant details, including 'as laid' positions, of all infrastructure to ensure updates are applied to appropriate navigational charts.

3.3.12 The Licensing Authority must be notified at least one month in advance of any maintenance of the works. In the event that these works are not covered by the licence and are considered by the Licensing Authority as being material and being licensable marine activities then the works will require a new marine licence.

3.4 Upon Completion of the Licensed Activity

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

3.4.2 The Licensee must, no later than 14 days following the Completion of the works and/or Licensed Activity notify the Licensing Authority, in writing, of the date of the Completion of the works and/or Licensed Activity.

3.4.3 The Licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system.

3.4.4 The Licensee must submit written reports to the Licensing Authority stating the exact location of the moorings and the nature and total quantity of all materials and structures used in the construction of the works. The written report must be submitted to the Licensing Authority within one month of construction.

3.4.5 The Licensee must apply to the Northern Lighthouse Board for a Statutory Sanction to Discontinue an Aid to Navigation via navigation@nlb.org.uk.

3.4.6 The Licensee shall ensure that, at least three months prior to the expiry of the licence, the works must be altered by taking all temporary materials and structures to a place above Mean High Water Springs.

3.4.7 The Licensee must take all reasonable, appropriate and practicable steps to ensure the removal of all materials,

structures and objects, and restore the site to its original condition, in accordance with the PEMP and the approved DP to the satisfaction of the Licensing Authority. Should the works be discontinued prior to completion of the works, the Licensee must inform the Licensing Authority in writing of the discontinuation of the works.

3.4.7 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 31 March 2022.

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.

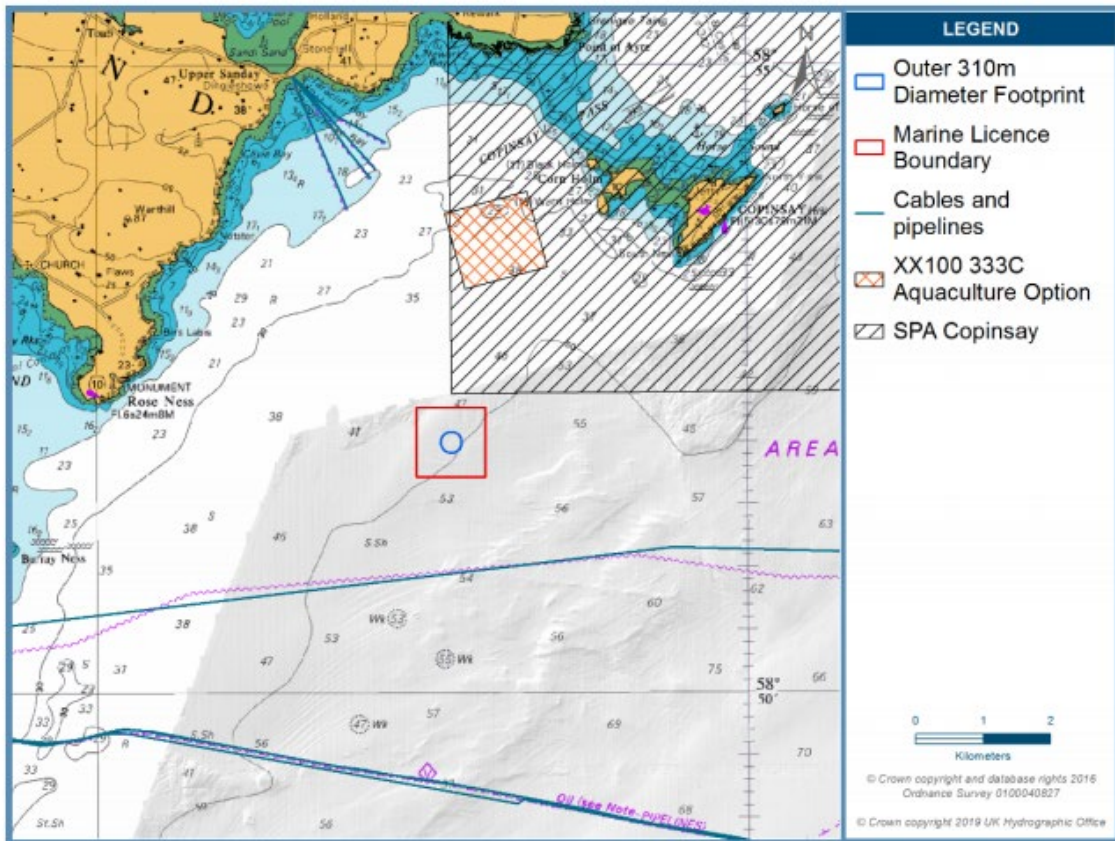


Figure 3-1 Proposed licence and deployment area at Test Site

Source: Marine Licence Application