

THE CONSERVATION (NATURAL HABITAT, &c.) REGULATIONS 1994 (AS AMENDED)

LICENCE TO DISTURB MARINE SPECIES

Public Case Handling Report for Licence Number: EPS-00012424

Site	Berth 5, Fall of Warness Tidal Test Site, Orkney
Company	Orbital Marine Power (Orkney) plc Innovation Centre - Orkney Hatston Pier Road Kirkwall OrkneyKW15 1ZL
Brief Description of Project	Orbital O2 Tidal Turbine
Associated Licences	Variation to European Protected Species Licence EPS-00010903

Species	harbour porpoise (<i>Phocoena phocoena</i>);minke whale (<i>Balaenoptera acutorostrata</i>);Risso's dolphin (<i>Grampus griseus</i>);killer whale (<i>Orcinus orca</i>);white-beaked dolphin (<i>Lagenorhynchus albirostris</i>)
Inshore/Offshore	Inshore

TEST 1	Purpose of licence
	Imperative reasons of overriding public interest (including those of a social or economic nature and beneficial consequences of primary importance for the environment)
Comments	
There are several different purposes for which an EPS licence can be granted including, under Regulation 44(2)(e) of the Conservation (Natural Habitats, &c.) Regulations 1994, for preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment. The applicant has provided justification that the continued deployment, operation and maintenance of the Orbital O2 tidal turbine at the EMEC Fall of Warness test site is a key stage in the commercialisation of tidal stream energy technology. The applicant states that the project provides significant environmental, economic and social benefits, including supporting the transition to low-carbon electricity generation, contributing towards Scottish and UK net-zero and decarbonisation targets, securing further investment in the tidal energy sector, and sustaining skilled employment in Orkney and the wider north of Scotland. The project is intended to support the development of a predictable renewable energy source with potential for large-scale future deployment.	
Test 1 satisfied?	YES

TEST 2	Satisfactory alternatives
Comments	
Regulation 44(3)(a) of the Conservation (Natural Habitats, &c.) Regulations 1994 requires the Scottish Ministers to be satisfied that there is no satisfactory alternative before an EPS Licence can be issued. The primary aim of the project is to undertake long-term testing and demonstration of the Orbital O2 tidal turbine at a grid-connected site capable of supporting the commercialisation programme. The applicant states that the European Marine Energy Centre (EMEC) is currently the only UK site with the necessary combination of consents, physical grid connection and available grid capacity required to deploy and operate the O2 turbine. As such, no alternative UK test site capable of delivering the same outcome has been identified. The applicant has considered the consequences of the project not proceeding. They state that without deployment at EMEC, Orbital would be unable to continue development and commercialisation of its tidal stream technology or secure further funding. This could result in the loss of approximately 35 jobs and would significantly hinder the development of the tidal stream sector and its contribution to low-carbon energy generation. The applicant therefore considers the do-nothing option unsatisfactory.	
Test 2 satisfied?	YES

TEST 3	Favourable conservation status
Comments	
NatureScot reviewed the application to extend the validity of the EPS Licence for the Orbital O2 tidal turbine at Berth 5, Fall of Warness tidal test site. Having reviewed its previous advice (dated 23 August 2022 and 1 August 2024) and the supporting application information, NatureScot advised that it is content for the licences to be extended until 22 March 2028, in line with the associated EMEC Fall of Warness Section 36 consent. By confirming that they it is content with the proposed licence extension, NatureScot has not identified any new impacts that would be detrimental to the maintenance of the favourable conservation status of the EPS species covered by the licence within their natural range. NatureScot has not raised any concerns regarding the continued validity of the original assessment on which the licences were granted.	
Test 3 satisfied?	YES

Date application received: 07/07/2026

Consultation start date: 28/07/2026

Consultation end date: 25/08/2026

Notes

Date	title	Text
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National Marine Plan considerations:

The decision is: In accordance and no further action required
Comments: The applicant references National Marine Plan Policy Renewables 1 through siting the project within a designated Plan Option area for marine renewable energy development. In addition, although not specifically cited, the proposal is consistent with the following General Policies: GEN 9 (Natural Heritage) - The application references the EMEC Environmental Appraisal, identifies relevant EPS species, and commits to mitigation measures through the Project Environmental Monitoring Programme (PEMP) and adherence to the Scottish Marine Wildlife Watching Code. GEN 13 (Climate Change) - The project supports renewable electricity generation, decarbonisation of the energy sector, and Scottish and UK net-zero commitments. The application references climate change targets and the role of tidal stream energy in reducing greenhouse gas emissions. GEN 19 (Sound Evidence) - The application references: SCANS IV density modelling; Waggitt et al. species distribution data; IAMMWG abundance estimates; EMEC environmental appraisal work;

Marine wildlife survey data collected between 2023 and 2025.

The applicant has therefore presented evidence-based information on species occurrence and likely impacts.

Although not specifically cited within the application, the application is consistent with the objectives and policy of the Orkney Islands Regional Marine Plan ("OIRMP"), particularly:

General Policy 1 - Sustainable Development, Activities and Use - The application aligns with the OIRMP presumption in favour of sustainable development where environmental effects are appropriately managed.

General Policy 3 - Climate Change - The application is related to a renewable energy project which will contribute to Net Zero objectives and decarbonisation of energy generation.

General Policy 4 - Supporting Sustainable Social and Economic Benefits - The Orbital O2 project supports employment within Orkney and aims to further commercialisation of tidal energy technology.

General Policy 5 - Safeguarding Natural Capital and Ecosystem Services - The application commits to adhere to the approved Project Environmental Monitoring Programme which includes mitigation measures.

General Policy 9 - Nature - The OIRMP requires protection of biodiversity and compliance with EPS legislation. The application contains species information and mitigation commitments.

General Policy 11 - Surface and Underwater Noise and Vibration - Marine Noise Registry is not required as the application does not indicate the use of explosives, piling, acoustic deterrent devices or survey equipment (10 Hz - 10 kHz). This application is in line with relevant European Protected Species legislation.

Sector Policy 5b (Wave and Tidal Energy) - The application supports the Plan's renewable energy, climate change and socio-economic objectives while demonstrating consideration of protected species, designated sites and mitigation measures.