

21 March 2025

Marine Directorate Licensing Operation Team
Scottish Government
375 Victoria Road
Aberdeen AB11 9DB

Dear MD-LOT

Screening opinion – Request for extension of consent granted by Scottish Ministers under Section 36 of the Electricity Act 1989 to construct and operate EMEC Fall of Warness site, adjacent to the island of Eday, Orkney

Please accept this letter as a request for a further extension to the Section 36 (S36) consent, granted in December 2014 to European Marine Energy Centre (EMEC) to operate the Fall of Warness (FoW) tidal test site.

A previous extension was granted for 3 years until March 2026 to allow additional time for the 50MW application process to complete. Unfortunately, more time is now required to complete the 50MW application process due to the requirement for two years bird survey data collection and continued discussions around marine mammal collision risk with NatureScot. It has been highlighted by NatureScot that these discussions are critical and should be concluded as much as possible before submission of the 50MW application which may delay the determination further.

Legislative Framework

Section 36 Variation: Section 36C of the Electricity Act 1989 (“the 1989 Act”) provides powers to the Scottish Ministers to vary a Section 36 consent.

Background

EMEC currently holds a S36 consent for the Fall of Warness site in Eday which is valid until March 2026. EMEC is seeking an extension to the end date of their current



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S36 consent for another 2 years until March 2028. The current site activities lie within the project envelope described within the 2014 Environmental Appraisal (EA) and this will not change over the next 2 years or until the 50MW section 36 consent is achieved. This, in turn, means there will be no change to the environmental impacts assessed in the original EIA.

To facilitate further technology development of this sector, EMEC are currently progressing work on developing a new EIA and S36 consent to expand their electrical capacity to 50 MW and expand the project envelope parameters. The extension to the end date of the current S36 will allow continued use of the site for developers in the tidal sector in the interim period.

EMEC has carried out an assessment based on the information provided in the original EIA and an assessment against the new EIA regulations. The results of this screening assessment are provided below.

Review of assessment within the EIA, EA and Appropriate Assessment

EMEC submitted an EIA and subsequent Navigational Risk Assessment (NRA) in 2005. An EA was produced in 2014 to help pre-appraise potential projects using a 'project envelope' approach. The EA provides detailed impacts of potential deployment and operation of tidal devices at the FoW site. The impacts detailed in the EA are still considered applicable, therefore, extending the life of the current S36 is not expected to change the impacts described.

A summary of the receptors considered during the original EIA and taken forward to the EA is provided below.

Table 1. Summary of original EIA and screening recommendation

Receptor	Impact Significance	Recommended to be screened into further assessment	Document and Section
Benthic Environment	Negligible/Minor	No – no additional impact	2014 EA – Section 4.1
Fish and shellfish	Negligible/Minor	No – no additional impact	2014 EA – Section 4.2
Basking shark	Minor/Moderate	No – no additional impact	2014 EA – Section 4.4
Marine Mammals	Minor/Moderate	No – no additional impact	2014 EA – Section 4.5 (Cetaceans), 4.6 (Seals), 4.7, 4.8 (Otters)
Birds	Negligible/Minor	No – no additional impact	2014 EA – Section 4.9, 4.10

Marine Water Quality	Negligible/Minor	No – no additional impact	2005 EIA – Section 6.2
Hydrology, Geology and Surface Water	Negligible/Minor	No – no additional impact	2014 EA – Section 4.3
Seascape and Landscape	Negligible/Minor	No – no additional impact	2014 EA – Section 4.11
Commercial Fisheries	Minor/Moderate	No – no additional impact	2005 EIA – Section 6.2 and 9.5
Shipping and Navigation	Minor/Moderate	No – no additional impact	NRA (2023)
Traffic and Transport	Negligible/Minor	No – no additional impact	2005 EIA – Section 6.2 and 9.5
Archaeology	Negligible/Minor	No – no additional impact	2005 EIA – Section 6.2 and 9.7
Onshore noise	Negligible/Minor	No – no additional impact	2005 EIA – Section 6.2 and 7
Socio-economic	Significant positive	No – no additional impact	BiGGAR – 20 years of EMEC
Tourism and Recreation	Significant positive	No – no additional impact	2005 EIA – Section 6.2 and 9.5
Military Activity	Negligible	No – no additional impact	2005 EIA – Section 6.2 and 9.5

Information from EMEC, and guidance from statutory consultees, concluded that the installation and operation of devices at the FoW test site will not adversely affect the integrity of any Special Protection Areas (SPAs) or Special Areas of Conservation (SACs) alone or in combination with other developments, as long as conditions in any associated marine licences are complied with. This information went on to inform the Licencing Authority's Appropriate Assessment (AA). All relevant mitigation measures and conditions have been applied throughout the life of this S36; therefore, the conclusions of the AA remain valid.

Since the writing of the EIA, two new SPAs have been designated in 2022, North Orkney and Scapa Flow. Between these two sites they are designated for supporting non-breeding black-throated diver, common eider, Great northern diver, long-tailed

duck, red-breasted merganser, European shag, Slavonian grebe, and velvet scoter and breeding populations of red-throated diver. In order to assess if the FoW site would have a potential significant effect on seabirds initially, the EA grouped seabirds into 'natural heritage features' such as 'divers', 'seaducks' and 'cormorants and shags'. Of the species designated under the new SPAs, they can be placed into these three receptor groups. The EA assessed a maximum-case scenario based on the project envelope, where all available berths within the test site are deployed and operating at capacity and concluded that potential impact pathways would not significantly affect maintenance of the local populations represented by these receptor groups. As there will be no changes to site activities over the proposed S36 extension, it is anticipated site will not undermine the conservation objectives for qualifying features of the North Orkney and Scapa Flow SPAs.

Based on the review of the original application and determination, EMEC considers the request for an extension of consent for a further 2 years does not constitute a change to the licence activities, nor is it expected that increasing the lifespan of the S36 will alter predicted potential impacts. Due to the findings of the current EIA, EA and AA, EMEC consider that a further EIA, to cover the extension of consent duration is not required.

Review of new EIA regulations and potential additional impacts

The screening request variation will be considered in the context of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. The new Regulations transpose the additional requirement of Directive 2014/52/EU through amendments to Directive 2011/92/EU.

Regulations 4(2) and (3) of the 2017 Regulations requires the Environmental Impact Assessment to identify, describe and assess the significant effects of the proposed development on the factors specified below and the interaction between them:

- a) population and human health.
- b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive.
- c) land, soil, water, air and climate.
- d) material assets, cultural heritage and the landscape.

In addition, Regulation 4(4) requires the assessment of the effects to include the expected effects deriving from the vulnerability of the development to risks, so far as relevant to the development, of major accidents and disasters.

Of these changes, EMEC believe all aspects were covered adequately in the original EIA apart from population and human health. The new EIA regulations do not; however, define what population and human health should consider. The World Health Organisation (WHO) defines human health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. With regards to the FoW site, EMEC believes that impacts on human health will be negligible in terms of physical and mental well-being. The original EIA did assess socio-economics and concluded the development of the Fall of Warness site created approximately 300 jobs and there was a significant increase in spend in the local community, particularly during devices' installation, creating a positive impact in the local area.

In addition, this site will facilitate more developers to test their devices, ultimately, assisting in the goal of achieving net zero, leading to a reduction in emissions and therefore, improving human health.

Changes to screening

Regulations 8(2) and 8(4) of the 2017 Regulations asks for applicants to provide information on the project and its likely significant effects to enable a screening decision to be made. Information on the likely significant effects (or lack of) is presented in this letter and information on the characteristics of the project is included in Appendix A. It should be noted that the original application was based on a Design Envelope that has not changed since.

As far as EMEC is aware, no new information has come to light since the original application that may lead to any further significant effects that have not already been described.

Recognising the 2017 EIA regulations, which states that only proposals which are likely to have significant effects should be screened into EIA, EMEC hopes that the information presented within this letter will allow MD-LOT and Scottish Ministers to issue a screening opinion which confirms that the variation of consent does not necessitate a new EIA to be submitted.

Yours sincerely

Donald Leaver

Environment & Consents Manager

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Appendix A

EMEC has included details on the project below in order to meet Regulations 8(2) and 8(4) of the 2017 EIA Regulations.

(1) An applicant may request the Scottish Ministers to adopt a screening opinion.

Please accept this letter as a request for screening opinion.

(2) A request for a screening opinion under paragraph (1) must be accompanied by-

a. A description of the location of the development, including a plan sufficient to identify the land.

A description of the location of the works was provided within the 2014 Environmental Statement in Section 1.2 and 1.3 which can be accessed here:

<http://marine.gov.scot/data/environmental-statement-fall-warness-tidaltest-site-emec>

b. A description of the proposed development, including in particular –

i. A description of the physical characteristics of the proposed development and, where relevant, of demolition works. ii. A description of the location of the proposed development, with particular regard to the environmental sensitivity of geological areas likely to be affected.

This information was provided within the 2014 Environmental Statement in Section 1.4 which can be accessed here:

<http://marine.gov.scot/data/environmentalstatement-fall-warness-tidal-test-site-emec>

c. A description of the aspects of the environment likely to be significantly affected by the proposed development; and

This information was provided within the 2014 Environmental Statement in Section 5.1 which can be accessed here:

<http://marine.gov.scot/data/environmentalstatement-fall-warness-tidal-test-site-emec>

d. A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from –

i. The expected residues and emissions and the production of waste, where relevant. ii. The use of natural resources, in particular soil, land, water and biodiversity.

A description of all of these factors in relation to each relevant receptor was provided in the environmental appraisal Section 4 which can be accessed here: <https://tethys.pnnl.gov/publications/emec-fall-warness-test-site-environmentalappraisal>

(3) A request for a screening opinion may, in addition to the information required in accordance with paragraph (2), also be accompanied by a description of any features of the proposed development, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.

No likely significant effects are predicted to result from the proposed extension of the consent; therefore, no mitigation measures are proposed within this request for a screening opinion.

(4) The information referred to in paragraph (2) is to be compiled taking into account, where relevant –

- a. The selection criteria set out in schedule 3: and***
- b. The available results of relevant assessment.***

The information referred to in paragraph (2) was presented within the original application, took account of criteria set out in schedule 3, and the results of the relevant assessment. This can be accessed via the link above within the 2014 Environmental Statement in Section 4.