

T: +44 (0)300 244 5046  
E: ms.marinelicensing@gov.scot

Mr I Mackinnon  
Comhairle nan Eilean Siar  
Sandwick Road  
Stornoway  
Isle of Lewis  
HS1 2BW

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## **MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING**

### **THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) 2017 REGULATIONS (AS AMENDED)**

#### **DECISION NOTICE – MARINE LICENCES FOR THE CONSTRUCTION, DREDGING, DEPOSIT OF DREDGED SUBSTANCES OR OBJECTS AND REMOVAL OF SUBSTANCES OR OBJECTS ASSOCIATED WITH THE UPGRADING OF THE EXISTING FERRY TERMINAL AT LOCHMADDY, NORTH UIST**

#### **1 Application and description of the works**

- 1.1 On 23 April 2019 Comhairle nan Eilean Siar (“CnES” or “the Applicant”) having its registered office at Sandwick Road, Stornoway, Isle of Lewis, HS1 2BW, submitted to the Scottish Ministers an application under Part 4 of the Marine (Scotland) Act 2010 (“the 2010 Act”) for the construction, dredging, deposit of dredged substances or objects and the removal of substances or objects associated with the upgrading of the existing Ferry Terminal at Lochmaddy, North Uist (hereinafter collectively referred to as “the Works”). The applications were accompanied by an Environmental Impact Assessment Report (“EIA Report”) in accordance with The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (“the 2017 MW Regulations”) (hereinafter collectively referred to as “the Application”).

- 1.2 The EIA Report received was also submitted to CnES planning department in relation to the associated onshore, terrestrial works for which planning permission is required. This decision notice considers only the information relative to the marine environment.
- 1.3 The Works include the following components:
- Pier upgrade including repairs and strengthening;
  - Capital dredging and deposit of dredged substances or objects; and
  - Extension of marshalling area and hard standing area through land reclamation, including construction of a rock armour revetment.
- 1.4 Construction works will be conducted between 7am to 8pm Monday to Saturday, with Saturday work generally finishing earlier. No Sunday working is anticipated to occur. However, work outwith these hours may be required on an infrequent basis to suit tides and ferry movements, or for other operational reasons.
- Pier upgrade*
- 1.5 There is a need to carry out varying degrees of repair and strengthening to the existing pier. Prior to works commencing on the pier, temporary pneumatic fenders will be installed to allow berthing of the ferry throughout the construction phase. The berthing line will be moved out from the existing pier to allow works to be carried out on the pier edge without disrupting ferry operations.
- 1.6 Works to the middle pier section will include concrete repairs to the existing pier deck, cross beams and columns adding additional rebar and spraying concrete to coat the structures under the pier, including existing concrete piles. Steel braces and rock dowels will also be installed and connected by concrete supports to reinforce the structure. The metal piles of the outer pier section will be wrapped in corrosion prevention tape to preserve the structure. The roundhead at the end of the outer section will be cut down to facilitate tie in with a new caisson.
- 1.7 The pier will be extended utilising a prefabricated concrete caisson. The extension is approximately 35 metres ("m") long, providing an overall pier length of 145m. The caisson is 12.5m wide, providing a wider working area than afforded by the rest of the pier which is 9.8m wide. New concrete decking will join the caisson to the end of the existing pier. The caisson will be placed onto a preconstructed base and will be infilled with imported rock fill. Scour protection will be placed around the caisson.
- 1.8 Parallel Motion Fenders will be installed on new piles along the berth face of the existing pier and attached directly onto the caisson. The wooden fenders

on the northern face of the inner concrete section and middle sections of the pier will be removed and replaced like for like.

*Capital dredging and deposit of dredged substances or objects*

- 1.9 There are three dredge areas as shown in Appendix 1. Dredging to a depth of -5m Chart Datum ("CD") will be completed to allow a larger ferry vessel to berth and manoeuvre safely, referred to as the berth and manoeuvring dredge areas. Dredging is also required for the caisson base, referred to as the caisson dredge. An area around the footprint of the caisson will be dredged to -8.5m CD. Dredging will be carried out by either a Backhoe Dredger ("BHD") or Trailer Suction Hopper Dredger ("TSHD"). It is unlikely that TSHD will be suitable for use in all areas, so if it is to be used, it will be in combination with BHD. The total amount of substances or objects to be dredged is 16,000 wet tonnes and all will be deposited at the designated Stornoway deposit site.
- 1.10 Dredging is planned for the winter months when the number of vessels utilising the pontoons and moorings are likely to be lowest. To facilitate dredging adjacent to the linkspan, the pontoon anchors will be relocated for the duration of the dredging and reinstated once complete.

*Marshalling and hard standing area*

- 1.11 The marshalling area will be increased and a hard standing area created by extending the north east and north west of the existing marshalling area. To the north west, the small hill between the existing marina facility and the access road to the hotel will be removed to reduce the height to the level of the existing access road. This material will then be used to create a rock revetment along the seaward edge of the proposed marshalling area extension and the remaining material from the levelling works will be used as infill for the land reclamation.
- 1.12 This decision notice contains the Scottish Ministers' decision to grant regulatory approval for the Works as described above, in accordance with the 2017 MW Regulations.

## **2 Summary of environmental information**

- 2.1 The environmental information provided by the Applicant was:-
- Lochmaddy Ferry Terminal Upgrade EIA Report that provided an assessment of the impact of the Works on a range of receptors;
  - Lochmaddy Ferry Terminal Upgrade Capital Dredge Best Practicable Environmental Option Report (dated 22 April 2019); and
  - Lochmaddy Ferry Terminal Upgrade Construction Environmental Management Document (issue 1 – dated 22 April 2019) ("CEMD").



- 2.2 A summary of the environmental information provided in the EIA Report is given below.

*Marine Mammals*

- 2.3 A desk study and literature search was undertaken by the Applicant to inform the characterisation of the existing marine mammal baseline conditions. As part of this, the Applicant considered the potential impact of the Works on several European designated sites and the Inner and Outer Hebrides proposed Nature Conservation Marine Protected Area ("pMPA"). Of these sites the Applicant considered the Works as having a likely significant effect on the Inner Hebrides and Minches Special Area of Conservation ("SAC") and the Ascrib, Isay and Dunvegan SAC designated for harbour porpoise and common seals respectively. The Works are located in the south western reaches of Loch nam Madadh, on the east coast of North Uist. These waters, within 1 kilometres ("km") of the Works, are rather confined, generally shallow, and offer little in the way of valuable marine mammal habitat. The Applicant therefore considered it unlikely that marine mammals will be frequent visitors despite their prevalence in neighbouring waters.

- 2.4 During construction there is potential for the marine mammal species identified to be impacted through disturbance due to increased underwater noise emissions, foraging impairment due to increased sediment loading in the water column during dredging and infilling operations and injury and displacement due to potential spills of hazardous substances.

- 2.5 In total, the Applicant identified eleven significant effects on marine mammal receptors potentially resulting from the Works. These effects were associated with the underwater piling noise and deposit of dredged substances or objects and were assessed as having the potential to result in moderate significant effects. Marine mammal observers and passive acoustic monitoring will be employed to ensure marine mammals are not in the designated mitigation zone prior to piling and dredge spoil deposit activities commencing. The Applicant considered the marine mammal mitigation detailed in the CEMD to reduce the residual impacts on marine mammals to minor and non-significant.

*Benthic Ecology*

- 2.6 The Applicant carried out benthic surveys of the area of the Works to gain an understanding of the benthic habitats, sediment type, and suitability of the dredged substances or objects for infilling purposes. The initial survey results identified that the majority of dredged substances or objects would not be suitable for reuse. The Applicant also identified from their surveys, multiple biotope complexes within the footprint of the Works, in the proposed construction, dredging and infilling areas. None of the recorded species or biotopes were of conservation concern. The Applicant identified the Loch nam



Madadh Special Area of Conservation SAC and Site of Special Scientific Interest ("SSSI"), Loch an Duin SSSI, Loch an Duin Ramsar Site, and Tong Saltings SSSI as being near the Works. The Applicant did not take forward the Loch nam Madadh SAC or SSSI in the assessment as none of the benthic features of these sites are found within the footprint of the Works, or in the immediate vicinity. The Applicant considered that the distance between the Works and the designated sites means that no benthic habitat connectivity is likely to exist and therefore no further assessment was undertaken.

- 2.7 The construction phase of the Works is likely to impact benthic ecology of the area of the Works through habitat loss, physical disturbance during dredging and the deposit of dredged substances or objects, increased sediment loading in the water column, accidental spillage of hazardous substances and introduction of non-native marine species. There will be a permanent loss of benthic flora, fauna and habitat in the extended marshalling area footprint and temporary loss in the dredge area. However, no high value habitats or species will be affected and population-level effects are not expected as habitat loss is small in relation to the overall area of Loch nam Madadh. The Works are also at one end of the loch and so will not result in habitat fragmentation.
- 2.8 The deposit site for dredged substances or objects is the existing designated Stornoway deposit site and the value of the benthic environment in this area is likely to be low, therefore cumulative benthic impacts are assessed as minor and non-significant.
- 2.9 The Applicant also assessed the impacts resulting from potential introduction of non-native marine species with respect to three vectors; use of equipment and vessels, the import of a prefabricated concrete caisson, and deposit of dredged substances or objects. The Applicant concluded that the risk of a marine non-native species being introduced by the Works was very low and therefore the associated impacts were found to be non-significant.
- 2.10 The Applicant also identified no significant impacts on benthic ecology as a result of the Works and no requirements for specific mitigation measures to reduce impacts on benthic receptors. This is in part due to the localised and temporary nature of the impacts and the quality and value of the receptors.

#### *Fish Ecology*

- 2.11 Basking sharks, Atlantic salmon, sea trout and European eel were identified as being potentially present near the Works. The Sea of Hebrides pMPA, designated for basking sharks was included in the assessment, but no designated sites for diadromous fish were considered, due to the lack of ecological connectivity to any of these areas. The Applicant found that Atlantic salmon, sea trout and European eel are likely to only be present in coastal

areas proximal to where their respective riverine habitats meet the marine environment.

- 2.12 The Applicant identified two freshwater systems that sustain populations of Atlantic salmon, sea trout and European eel in the vicinity of the proposed Works. Loch Struth Mhoir is connected to the sea via Loch Houram which in turn enters the sea 1.5 km north of the ferry terminal. Loch Sgealtair is connected to the sea via Loch na Ciste, which enters the sea 1.1km west of the terminal. Fish migrating to Loch Sgealtair will transit past the Works, however, there is a causeway between Loch na Ciste and Loch Sgealtair, so this is unlikely to be a major migration route. No notable freshwater habitats supporting diadromous fish species were identified as meeting the marine environment in the vicinity of the designated Stornoway deposit site.
- 2.13 Basking sharks are not expected to be present in high densities within the Minch to the east of the Outer Hebrides, although some sightings have been recorded. The shallow enclosed waters of Loch nam Madadh are not anticipated to provide valuable habitat for basking sharks. The Applicant therefore considers it to be unlikely that this species will be present in the immediate vicinity of the Works or the designated Stornoway deposit site.
- 2.14 Potential effects on diadromous fish and basking sharks were identified as being through increased sediment loading from dredging and deposit of dredged substances or objects, underwater noise from construction and accidental release of hazardous substances. All impacts are predicted to result in negligible to minor and non-significant impacts. While impacts on basking sharks were assessed as non-significant, marine mammal protocols for piling and the deposit of dredged substances or objects will also apply to basking sharks as best practice.

#### *Otters*

- 2.15 Loch nam Madadh is known to support a key dense otter population due to the ample availability of food and shelter resources for the species. The Applicant identified that the Works are in the Loch nam Madadh SAC which is designated in part for the conservation of otters. The Applicant also identified that the Loch an Duin SSSI lies 1.3km northeast from the development, which is also designated in part for otters. The Applicant considered the impacts on the SSSI to be less than those on the SAC, and therefore any otter mitigation identified to preserve the conservation objectives of the SAC would be equally effective for the SSSI.
- 2.16 The Applicant undertook a baseline otter survey which found that otters are utilising the shoreline to the east and north of the Works, as well as the islands to the west. However, the Applicant considered it very unlikely that holts will



be present due to the lack of fresh water bodies available to otters in the immediate vicinity of the Works.

- 2.17 The Applicant identified that adverse impacts on otters may result from disturbance, habitat loss, increased sediment loading, accidental releases of hazardous substances, injury, entrapment or barrier effects. Three significant impact pathways on the local otter population were identified as potentially resulting from the construction phase of the Works; disturbance from general site works, injury and entrapment through interactions with site equipment and structures, and barrier effects from site fencing. Due to the localised nature of these impacts and no discernible population levels for otters in Loch nam Madadh being identified the Applicant concluded that the impacts on the Loch nam Madadh SAC are not significant.
- 2.18 The Applicant does not expect that habitat loss resulting from the extended marshalling area and parking facilities will lead to significant impacts due to the very small area affected, the value of the habitat to otters, and the availability of similar habitat locally. The Applicant identified any impacts resulting from increased sediment loading during dredging and infilling as non-significant, as the area affected will be minimal and otters are known to be relatively tolerant of turbid waters. The risk of a spill of hazardous substances occurring and adversely affecting otters was considered minimal by the Applicant, due to the mitigation in the CEMD, hence the impact is non-significant.
- 2.19 To mitigate the potential impacts on otter resulting from the Works, an Otter Protection Plan ("OPP") has been included in the CEMD. The OPP includes the provision of pre-construction surveys, stopping works if otters are in close proximity to the site, conducting otter checks of equipment and materials prior to carrying out works, installation of escape ramps in excavations, and ensuring site fencing allows otters to pass beneath. After the implementation of the OPP, the Applicant assessed the residual impacts on otters associated with the Works as minor, non-significant.

#### *Noise (In-Air)*

- 2.20 Baseline noise measurements were taken to understand current noise levels in the vicinity of the Works. The Applicant assessed potential sources of noise from the construction activities in relation to noise sensitive receptors. Noise levels at the closest receptors vary considerably depending on the construction works being carried out, primarily due to the location in relation to the receptors.
- 2.21 The Applicant identified that the only significant noise was associated with the extension of the marshalling area to the north east on the two residential

properties, which are predicted to last up to four weeks. The Applicant and their construction contractor will work with residents to identify specific mitigation measures to meet their needs to minimise the effects which may include the installation of noise barriers.

2.22 The Applicant identified additional mitigation in line with best practice to minimise noise levels and keep local residents aware of the proposed work schedule and when abnormally noisy activities may occur.

2.23 During the operational phase, night time noise levels are expected to reduce from those currently arising when the ferry is alongside overnight due to cold ironing. This was identified to be a significant benefit to local residents. Additional vehicle movements were not sufficient to have any more than a negligible effect on traffic noise levels in Lochmaddy.

*Noise (Underwater)*

2.24 Both vibro and impact piling will be required to support new fenders, resulting in elevated levels of underwater noise. Dredging will also be utilised during the Works which will contribute to underwater noise. Marine impact piling is expected to result in the greatest underwater noise levels and was therefore the focus of the underwater noise assessment.

2.25 No baseline monitoring of the existing noise levels within Loch nam Madadh was conducted. The Applicant defined the current source of underwater noise as vessel traffic, mainly from the ferry and smaller vessels using pontoon, pier and mooring facilities and potentially acoustic deterrent devices at adjacent marine farms. Noise levels at differing ranges from the construction phase were estimated and compared to published acoustic impact criteria for marine mammals and fish. The impact ranges resulting from the modelled construction phase varied significantly, depending on the predicted source level. There were also considerable differences between the fish and marine mammal receptors depending on species and criteria. The greatest acoustic injury range identified of 280m was on high frequency cetaceans (harbour porpoises) resulting from impact piling. Specific acoustic impact assessments and appropriate mitigation are included in the CEMD.

*Traffic, Access and Navigation*

2.26 The Works have been planned to ensure the ferry service can operate throughout the construction phase and the Applicant has taken steps to ensure essential deliveries can be made and local vessels can continue to utilise the pier during the construction phase.

2.27 The berth dredge requires the easterly pontoon anchors to be temporarily relocated and, as dredging will be close to the pontoons, the berths at the east end of the pontoons may need to be temporarily taken out of service. Dredging



will be carried out in winter months, when there are fewer visiting vessels and hence there should be enough berths for the local vessels on the pontoon. The pontoon access bridge will be removed as part of the Works but this will not happen until an alternative is made available.

#### *Water Quality and Coastal Processes*

- 2.28 The Applicant assessed the potential impacts on marine water quality and coastal processes from both the construction and operational phases of the Works.
- 2.29 The Applicant identified potential increases in sediments in the water column from the land reclamation, dredging and deposit of dredged substances or objects. The Applicant concluded however that the effects on the water column from the dredging and deposit of dredged substances or objects are expected to be short-term, minor and non-significant as solids tend to pass through the water column and quickly settle on the seabed. With regards to the land reclamation, the Applicant will use materials low in fines and geotextiles which prevent the escape of solids and therefore predicted no change in water quality. A Water Framework Directive assessment was completed and found that there is no predicted reduction in the water quality status of the West Highland waterbody due to the Works.
- 2.30 The construction works will involve the use of potentially polluting substances, such as fuel and hydraulic fluids however, the volumes involved are relatively small and so no significant impacts were identified by the Applicant. Industry best practice regarding storage and handling of potentially polluting substances will be implemented to ensure that the chance of a loss of containment is minimised.
- 2.31 The Applicant considered the risk of introduction of non-native marine species during the construction and operational phases of the Works. The Applicant concluded that the introduction of non-native marine species is unlikely due to a small number of vessels being used and the implementation of the Ballast Water Management Convention. The Applicant has also included adherence to the Ballast Water Management Convention in the CEMD.
- 2.32 The Applicant also considered the potential impact of marine litter during the construction phase, noting waste will be appropriately segregated and sorted to prevent it entering the marine environment. Waste receptacles will be provided at terminal facilities to reduce the likelihood of the public dropping litter.
- 2.33 The Applicant did not identify any change to flood and coastal processes as a result of the Works and no change to the flood risk to the terminal was identified.

- 2.34 The Applicant assessed the potential of cumulative effects on water quality from three other projects associated with the shared use of the designated Stornoway deposit site as minor non-significant, as effects on the sediment loading in the water column will be short lived and reversible in all cases. The Applicant considers that it is unlikely that other projects will be depositing dredged substances or objects at the same time.

### 3 Consultation

- 3.1 In accordance with the 2017 MW Regulations, advertisement of the Application was made in the local and national press and the Applicant's website. Notices were placed in the public domain and the opportunity given for those wishing to make representations to do so.
- 3.2 The dates of the consultation exercises are given below. The regulatory requirements regarding consultation and public engagement have been met and the responses received taken into consideration. Where matters have not been fully resolved, conditions have been included to ensure appropriate action is taken after regulatory approval is granted.

Document	Date Received	Dates of Consultation	Publication
Environmental Impact Assessment Report & Appendices	23 April 2019	24 May 2019 to 23 June 2019	Stornoway Gazette (23 May 2019)  Edinburgh Gazette (23 May 2019)
Marine licence application and supporting documentation			Marine Scotland Information website (23 May 2019) <a href="http://marine.gov.scot/ml/lochmaddy-ferry-terminal-development">http://marine.gov.scot/ml/lochmaddy-ferry-terminal-development</a>  Caledonian Maritime Assets Ltd (30 April 2019) <a href="http://www.cmassets.co.uk/project/skye-triangle-infrastructure-works/">http://www.cmassets.co.uk/project/skye-triangle-infrastructure-works/</a>

- 3.3 A summary of the responses is set out in sections 4, 5 and 6. The responses are available to view in full [here](#).

### 4 Summary of statutory consultee responses



- 4.1 Scottish Environmental Protection Agency ("SEPA") responded on 18 June 2019 stating that it had no objection to the Works. SEPA referred to its standing advice on marine consultations. SEPA also commented on flood risk and advised that to ensure flood resilience throughout the lifetime of the development, a suitable freeboard, and other factors including climate change should be taken into account.
- 4.2 SEPA accepted the approach taken by the Applicant in the assessment in the EIA Report and agreed with the water levels derived. SEPA noted that the lowest point of the marshalling area would be overrun by waves by 100mm during a 1 in 200 year event however, it is graded upwards to connect to higher ground and therefore the inundation would be limited to the existing infrastructure with all new works above 3.95m Above Ordnance Datum.
- 4.3 SEPA advised that the Applicant should satisfy themselves that the level of freeboard is appropriate for the development site.
- 4.4 Historic Environment Scotland responded on 12 June 2019 confirming no objections and that the Works will not have any significant adverse impacts on heritage assets within its remit, namely scheduled monuments and their setting, category A-listed buildings and their setting, inventory gardens and designated landscapes, inventory battlefields or marine protected areas.
- 4.5 Scottish Natural Heritage ("SNH") responded on 19 July 2019 advising that the Works will have a likely significant effect on the otter feature of the Loch nam Madadh SAC and the harbour porpoise feature of the Inner Hebrides and Minches SAC. SNH concluded that the Works will not adversely affect the integrity of these sites providing the mitigation measures identified in the EIA Report are implemented. SNH also advised that the Works are capable of affecting the North-east Lewis pMPA and the Sea of Hebrides pMPA but that the effects are insignificant providing the marine mammal mitigation measures proposed by the Applicant are effectively implemented.
- 4.6 SNH also advised that the Works will result in the loss of a small area of rocky shore habitat which is a designated feature of the Loch nam Madah SSSI. However, SNH further advised that the habitat within the area of the Works is of low quality and when compared with the expansive areas of this habitat within the SSSI, the loss will not affect the feature overall or the reasons for which it was designated.
- 4.7 CnES responded on 17 June 2019 confirming that there are no planning objections to the Works. CnES are determining a concurrent planning application for the landward works and will keep MS-LOT appraised of any issues that may arise and that may have a bearing on the determination of the

associated marine licence applications. CnES have not notified MS-LOT of any issues from the concurrent planning application.

## **5 Summary of non-statutory consultee responses**

- 5.1 The Maritime and Coastguard Agency responded on 24 June 2019 noting that the Applicant is the statutory harbour authority and therefore only advised that CnES ensure that its Safety Management System under the Port Marine Safety Code is reviewed and kept up to date.
- 5.2 Northern Lighthouse Board responded on 19 June 2019 confirming no objections to the Works, and its recommendations with regards to navigation will be included as conditions of the marine licences.
- 5.3 Royal Yachting Association Scotland responded on 03 June 2019 confirming that it had no comment to make on the Application.
- 5.4 Transport Scotland responded on 17 June 2019 confirming that, based on the assumption of no vehicles associated with the Works travelling on the trunk roads, it had no objections to the Works in terms of environmental impact on the trunk road network.
- 5.5 The Applicant confirmed that the aforementioned assumption is likely to be true for the bulk materials delivery, which will be sourced locally or delivered by sea but it should be noted that construction personnel, potentially equipment including up to ten pieces of heavy plant may be delivered from the mainland. Further clarification was sought from Transport Scotland on 08 July 2019 who agreed with the Applicant's assessment that any increase in traffic levels would be negligible and confirmed that they continued to have no objections to the Works in terms of environmental impact on the trunk road network.
- 5.6 Visit Scotland did not object to the Works in its response dated 25 June 2019. Visit Scotland noted that the Works will undoubtedly assist the development of marine tourism for Scotland.
- 5.7 Scottish Water responded on 28 May 2019 confirming that it had no objection to the Works. Scottish Water noted that the Applicant should be aware that this does not confirm that the Works can be serviced. Scottish Water advised the Applicant that once a formal connection application is submitted and after full planning permission has been granted, it will review the availability of capacity at that time and advise accordingly.

## **6 Representations from other organisations and members of the public**



- 6.1 No representations were received from other organisations or members of the public.

## **7 Advice from 3<sup>rd</sup> Parties**

- 7.1 Advice was sought from Marine Scotland Science ("MSS") in regards to potential impacts on the physical environment/coastal processes and marine mammals. In its response dated 17 June 2019 MSS advised that it had no comments or objections to make with regards to the physical environment/coastal processes. On 29 July 2019 MSS also advised that a licence for disturbance of European Protected Species ("EPS") is required.

## **8 The Scottish Ministers' Considerations and Main Determinative Issues**

- 8.1 The Scottish Ministers, having taken account of all relevant information, consider that the main determining issues are:
- the extent to which the Works accord with and are supported by Scottish Government policy and the terms of Scotland's National Marine Plan ("NMP") as well as relevant government and local development plans;
  - the significant effects of the Works on the environment, which, in summary, are impacts on marine mammals and otters.

### *Policy Context*

- 8.2 As the Works are proposed to take place within the Scottish marine area they are subject to the 2010 Act. The NMP covering inshore waters is a requirement of the 2010 Act. The NMP lays out the Scottish Minister's policies for the sustainable development of Scotland's seas and provides General Planning Principles ("GEN"), most of which apply to the Works. In addition, the NMP lays out sector specific objectives and policies for shipping, ports, harbours and ferries. The relevant policies were considered as part of the EIA process with the Works being deemed to meet the requirements of the GEN and to be contributing towards achieving relevant sector specific policies and objectives. The Works are also considered to align with the Scottish Government's Climate Change Plan and the Outer Hebrides Local Development Plan.
- 8.3 The Scottish Ministers are satisfied that the Works accord with and are supported by Scottish Government policy and the terms of the NMP.

### *Environmental Matters*

- 8.4 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out. Environmental information including the EIA Report has been produced and the applicable procedures regarding publicity and consultation laid down in regulations have been followed. The environmental

impacts of the Works have been assessed and the Scottish Ministers have taken the environmental information into account when reaching their decision.

- 8.5 The Scottish Ministers have considered fully and carefully the Application, supporting documentation and all relevant responses from consultees.

*Marine Mammals and Otters*

- 8.6 The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the 1994 Habitats Regulations”) require the Scottish Ministers to consider whether the Works would be likely to have a significant effect on a European site or European offshore marine site (either alone or in combination with other plans or projects), as defined in the 1994 Habitats Regulations.
- 8.7 Owing to the view of SNH that the Works are likely to have a significant effect on the harbour porpoise qualifying feature of the Inner Hebrides and the Minches SAC and the otter qualifying feature of the Loch nam Madadh SAC, MS-LOT, on behalf of the Scottish Ministers, as the “competent authority”, were required to carry out an Appropriate Assessment (“AA”). Having had regard to the representations made by SNH it can be ascertained that the Works will not adversely affect the integrity of the SACs providing the mitigation in the CEMD is adhered to. Having determined that the Works will not adversely affect the integrity of the site, and having regard to the reasons for which it was designated and the associated conservation objectives, MS-LOT concludes that the Works will not, on their own or in combination with other projects, adversely affect the integrity of the Inner Hebrides and the Minches SAC or the Loch nam Madadh SAC.
- 8.8 A full explanation of the issues and justification for decisions regarding site integrity is provided in the AA (available [here](#)).
- 8.9 Also owing to the view of SNH that the Works are capable of affecting protected features of the North-east Lewis pMPA and the Sea of Hebrides pMPA, MS-LOT, on behalf of the Scottish Ministers, as the “public authority”, were required to carry out an MPA Assessment. Having had regard to the representations made by SNH it can be ascertained that the Works are not capable of affecting the protected features of the North-east Lewis pMPA and the Sea of Hebrides pMPA other than insignificantly and therefore do not pose a significant risk to the achievement of the conservation objectives of the pMPAs providing the condition in the assessment is adhered to.
- 8.10 A full explanation of the issues and justification for decisions regarding the risk to the achievement of the conservation objectives is provided in the MPA Assessment (available [here](#)).



- 8.11 The Scottish Ministers are content that any significant impacts on marine mammals and otters will be appropriately mitigated providing the applicant adheres to the conditions set out in the AA, MPA Assessment and marine licences.

## **9 The Scottish Ministers' Determination and Reasoned Conclusion**

- 9.1 The Scottish Ministers are satisfied that an environmental impact assessment has been carried out and that the applicable procedures regarding publicity and consultation in respect of the Application have been followed.
- 9.2 The Scottish Ministers have weighed the impacts of the Works, and the degree to which these can be mitigated, against the economic benefits which would be realised. The Scottish Ministers have undertaken this exercise in the context of European, national and local policies.
- 9.3 The Scottish Ministers have considered the extent to which the Works accord with and are supported by Scottish Government policy and the terms of the NMP and the environmental impacts of the Works, in particular: the impact on the Inner Hebrides and the Minches SAC, Loch nam Madadh SAC, North-east Lewis pMPA, Sea of Hebrides pMPA; and marine mammals and otters.
- 9.4 The Scottish Ministers are satisfied that the environmental issues associated with the Works have been appropriately addressed by way of the design of the Works and mitigation. In particular, the Scottish Ministers are satisfied that the Works will not adversely affect the integrity of the Inner Hebrides and the Minches SAC or the Loch nam Madadh SAC. The Scottish Ministers are also satisfied that the Works are not capable of affecting, other than insignificantly the protected features of the North-east Lewis pMPA or the Sea of Hebrides pMPA. The Scottish Ministers consider it likely that the licensing tests in respect of an EPS disturbance application by the Applicant will be met.
- 9.5 The Scottish Ministers have had regard to the requirements of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.
- 9.6 In their consideration of the environmental impacts of the Works, the Scottish Ministers have identified conditions to be attached to the marine licences to reduce environmental impacts. These include adherence to the CEMD, including the OPP and Marine Mammal & Basking Shark Species Protection Plan.

- 9.7 The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion is still up to date.
- 9.8 The Scottish Ministers **grant marine licences subject to conditions** under Part 4 of the 2010 Act for the construction, dredging, deposit of dredged substances or objects and the removal of substances or objects associated with the upgrading of the existing Ferry Terminal at Lochmaddy, North Uist. The marine licences are attached at Appendix 2.
- 9.9 In accordance with the 2017 MW Regulations, the Applicant must publicise notice of this determination and how a copy of this decision letter may be inspected on the [Application website](#), in the Edinburgh Gazette and a newspaper circulating in the locality to which the application relates is situated. The Applicant must provide copies of the public notices to the Scottish Ministers.
- 9.10 Copies of this decision notice have been sent to the bodies consulted on the Application including the relevant planning authority, SNH, SEPA and HES. This decision notice has also been published on the [Marine Scotland Information website](#).
- 9.11 The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the [website of the Scottish Courts](#). Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours sincerely,  
[Redacted]

Marine Licensing Group Leader, Marine Scotland Licensing Operations Team

A member of the staff of the Scottish Ministers

05 November 2019



[illegible]

## Appendix 2. Marine licences



T: +44 (0)300 244 5046  
E: ms.marinelicensing@gov.scot

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT, ALTER OR IMPROVE ANY WORKS WITHIN THE SCOTTISH MARINE AREA AND TO USE A VEHICLE, VESSEL, AIRCRAFT, MARINE STRUCTURE OR FLOATING CONTAINED TO REMOVE SUBSTANCES OR OBJECTS FROM THE SEABED WITHIN THE SCOTTISH MARINE AREA

Licence Number: 07000/19/0

Reference Number: 07000

Scottish Ministers (hereinafter referred to as "the licensing authority") hereby authorise:

**Comhairle nan Eilean Siar  
Sandwick Road  
Stornoway  
Isle of Lewis  
HS1 2BW**

to construct, alter or improve works and to remove substances or objects from the seabed as described in Part 2 of the attached Schedule. The licence is subject to the conditions of use set out, or referred to, in Part 3 of the said Schedule.

The licence shall be valid from 01 January 2020 until 31 December 2021.

[Redacted]

Signed: \_\_\_\_\_

Malcolm Rose

For and on behalf of the licensing authority

Date: 05 November 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:

- a) "the 2010 Act" means the Marine (Scotland) Act 2010
- b) "licensable marine activity" means any activity listed in section 21 of the 2010 Act
- c) "licensee" means the recipient of the licence
- d) "the licensing authority" means the Scottish Ministers
- e) "mean high water springs" ("MHWS") means the average of high water heights occurring at the time of spring tides
- f) "seabed" means the ground under the sea

All geographical co-ordinates contained within this licence are in latitude and longitude format WGS84.

### **1.2. Contacts**

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

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

Tel: +44 (0) 300 244 5046  
Email: [ms.marinelicensing@gov.scot](mailto:ms.marinelicensing@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 operations. 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 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 the provisions of this licence or for any such other reason that appears to be relevant to the authority under section 30(2) or (3) of the 2010 Act.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, vary this licence if satisfied that the variation being applied for is not material.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, 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 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 provide full details of the matter to 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, either 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 by 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 Scottish Ministers under section 29(1) of the 2010 Act.

**2. PART 2 – PARTICULARS****2.1. Name(s) and address(es) of any other agents acting on behalf of licensee:**

Affric Limited  
Lochview Office  
Loch Duntelchaig  
Farr  
Inverness  
IV2 6AW

**2.2. Name(s) and address(es) of any contractors or sub-contractors acting on behalf of licensee:**

As per Annex One

See condition 3.1.2

**2.3. Name, description, registration number and country of registration of vessel(s) to be employed to undertake the removals:**

As per Annex One

See condition 3.1.3

The vessels referred to above must be so constructed and equipped as to be capable of the proper performance of the licensed activities in compliance with the conditions set out in the Schedule.

**2.4. Location of the works (hereinafter referred to as “the site”):**

Lochmaddy Ferry Terminal, below MHWS within the area bounded by joining the points:

1.	57° 35.822' N	007° 09.587' W
2.	57° 35.802' N	007° 09.313' W
3.	57° 35.801' N	007° 09.409' W
4.	57° 35.795' N	007° 09.390' W
5.	57° 35.788' N	007° 09.397' W
6.	57° 35.770' N	007° 09.338' W
7.	57° 35.790' N	007° 09.318' W
8.	57° 35.794' N	007° 09.231' W
9.	57° 35.783' N	007° 09.220' W
10.	57° 35.763' N	007° 09.292' W
11.	57° 35.746' N	007° 09.310' W
12.	57° 35.758' N	007° 09.350' W
13.	57° 35.763' N	007° 09.345' W
14.	57° 35.775' N	007° 09.445' W
15.	57° 35.791' N	007° 09.435' W
16.	57° 35.807' N	007° 09.313' W

As shown in Annex Two.

**2.5. Description of the works:**

Ferry Terminal Upgrade including; pier repairs and strengthening, extension of the marshalling area through land reclamation and the construction of a rock armour revetment.

As described in application dated 22 April 2019, and correspondence submitted in support of the application.

**2.6. Indicative quantity of substances or objects for removal and nature and indicative quantity of materials used below MHWS level in the construction, alteration or improvement of the works described in Part 2.4 of the licence:**

Materials to be used in construction

- 300 tonnes of steel
- 66 tonnes of timber
- 4800 tonnes of concrete
- 1 tonne of metal
- 4000m<sup>2</sup> of plastic/synthetic material
- 1000 tonnes of sand
- 4550 tonnes of gravel
- 6100 tonnes of cobbles
- 11400 tonnes of boulders
- 250 tonnes of asphalt
- 500m of pipe

Materials to be used in temporary construction

- 20.5 tonnes of steel
- 45 tonnes of timber
- 1100m<sup>2</sup> of plastic/synthetic material

Substances or objects to be removed

- 66 tonnes of timber
- 70 tonnes of concrete
- 5 tonnes of metal



### **3. PART 3 – CONDITIONS**

#### **3.1. General conditions**

##### **3.1.1. 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.

##### **3.1.2. Agents, contractors, sub-contractors and vessels**

The licensee must provide, as soon as is reasonably practicable prior to the licensed activities commencing, the name and function of any agent, contractor or sub-contractor appointed to undertake the licensed activities.

Any changes to the supplied details must be notified to the licensing authority, in writing, prior to any agent, contractor or sub-contractor undertaking any licensed activity.

The licensee must ensure that only those agents, contractors or sub-contractors notified to the licensing authority are permitted to undertake the licensed activities.

The licensee must give a copy of this licence and any subsequent variations that have been made to this licence in accordance with section 30 of the 2010 Act to any agent, contractor or sub-contractor appointed to carry out any part, or all, of the licensed activities. The licensee must satisfy themselves that any such agent, contractor or sub-contractor is aware of the extent of the licensed activity for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence.

##### **3.1.3. Vessels**

The licensee must submit full details of the vessels to be utilised in respect of the licensed activity, and their anticipated movements, to the licensing authority no later than one month, or at such a time as agreed with the licensing authority, prior to the commencement of the licensed activity. The vessel details provided must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

The licensee must ensure that a copy of this licence and any subsequent variations made to it in accordance with section 30 of the 2010 Act have been read and understood by the masters of any vessels being used to carry on any licensed activity under this licence, and that a copy of this licence is held on board any such vessel.

##### **3.1.4. Force Majeure**

If by any reason of force majeure any substance or object is deposited other than at the site which is described in this licence, 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, vehicle or marine structure determines that it is necessary to deposit the substance or object other than at the specified 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.

#### **3.1.5. 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.

#### **3.1.6. Submission of reports to the licensing authority**

Where it would appear to the licensee that there may be a delay in the submission of the reports, studies or surveys 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, studies or surveys ought to have been submitted to the authority under the terms of this licence.

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

#### **3.1.7. Environmental protection**

The licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to minimise damage to the Scottish marine area caused by the licensed activity authorised under this licence.

The licensee must ensure that any unauthorised debris or waste materials arising during the course of the works are removed from the site of the works for disposal at an approved location above the tidal level of MHWS.

The licensee must ensure that all substances and materials used during the execution of the works are inert (or appropriately coated or protected so as to be rendered inert) and do not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

The licensee must ensure that the risk of transferring 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.

#### **3.1.8. Availability of the licence for inspection**

The licensee must ensure that copies of the licence are available for inspection by any persons authorised by the licensing authority at:

- a) the premises of the licensee;
- b) the premises of any agent, contractor or sub-contractor acting on behalf of the licensee;
- c) the site of the works; and



- d) any onshore premises directly associated with the licensed activities.

### **3.1.9. Inspection of the works**

Any persons authorised by the licensing authority, must be permitted to inspect the works at any reasonable time.

### **3.1.10. Safety of Navigation**

The licensee must remove the works from below the level of MHWS, or such alterations made, within one month of notice being given by the licensing authority at any time it is considered necessary or advisable for the safety of navigation, and not replaced without further consent by the licensing authority. The licensee shall be liable for any expense incurred.

## **3.2. Prior to commencement of the works**

**3.2.1.** The licensee must notify the licensing authority of the date of commencement of all construction, alteration or improvement of works and removal activities relating to the licence. Separate notifications are required at the times of commencement and completion.

**3.2.2.** The licensee must complete and submit a Proposed Activity Form in the online Marine Noise Registry for all licensable marine activities that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise no later than 7 days prior to commencement of the licensable marine activity. If any aspects of the licensable marine activities differ 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 7 days prior to commencement of the licensable marine activity.

## **3.3. During the works**

**3.3.1.** The licensee must ensure that the works are carried out in accordance with the Construction Environmental Management Document ("CEMD") (issue 1, dated 22 April 2019) submitted to the licensing authority, or any subsequent version, approved for the purpose by the licensing authority. In the event that the licensee wishes to update or amend the CEMD, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than two month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approvals. The CEMD must remain consistent with the application and supporting information.

**3.3.2.** The licensee must liaise with the Northern Lighthouse Board to discuss the navigational marking requirement prior to each phase of the construction works. This will include the permanent Aids to Navigation ("AtoN") as well as any temporary AtoN required during the construction phases.

**3.3.3.** If it is desired by the licensee to display any marks or lights not required by this licence then details of such marks or lights must be submitted to the Northern Lighthouse



Board and their ruling must be complied with. The display of unauthorised marks or lights is prohibited.

- 3.3.4. The licensee must ensure that the works are maintained at all times in good repair.
- 3.3.5. The licensee must ensure suitable bunding and storage facilities are employed to prevent the release of fuel oils, lubricating fluids associated with the plant and equipment into the marine environment.
- 3.3.6. The licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the works.
- 3.3.7. In the event of the licensed activities being discontinued the works must be removed and the site cleared to the satisfaction of the licensing authority.
- 3.3.8. If in the opinion of the licensing authority the assistance of a Government Department, including the broadcast of navigational warnings, is required to deal with any emergency arising from:
  - a) The failure to mark and light the works as required by licence.
  - b) The maintenance of the works.
  - c) The drifting or wreck of the works.

The licensee shall be liable for any expenses incurred in securing such assistance.

- 3.3.9. The licensee must ensure that no deviation from the schedule specified in the licence is made without the further written approval of the licensing authority.

#### **3.4. On completion of the works**

- 3.4.1. The licensee must notify the licensing authority of the date of completion of all construction, alteration or improvement of works relating to the licence. Separate notifications are required at the times of commencement and completion.
- 3.4.2. The licensee must submit a written report regarding the materials used and substances or objects removed during the works to the licensing authority. The written report must be submitted on completion of the works and on the forms provided by the licensing authority no later than 31 October 2022.
- 3.4.3. The licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: [sdr@ukho.gov.uk](mailto:sdr@ukho.gov.uk); tel.: 01823 484444) of both progress and on completion of the works supply a copy of the licence, and wherever possible, 'as built plans', in order that all necessary amendments to nautical publications are made.
- 3.4.4. The licensee must remove all temporary materials listed in Part 1 of the licence before the expiry date of the licence. **The licence shall not continue in force after the expiry date of 31 December 2021.**
- 3.4.5. The licensee must complete and submit a Close-out Report for the licensable marine activities that produced loud, low to medium frequency (10Hz-10kHz) impulsive noise

SCHEDULE TO LICENCE NUMBER: 07000/19/0

DATED: 05 November 2019

in the online Marine Noise Registry at 6 month intervals during the validity of the licence.

## 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.
3. Under Section 30 of the Marine (Scotland) Act 2010, the licensing authority may vary, suspend or revoke the licence, if it appears to the licensing authority that there has been a breach of any of the provisions of the licence or for any other reason that appears to be relevant to the licensing authority.
4. Under Section 39 of the Marine (Scotland) Act 2010, it is an offence to carry on a licensable marine activity or cause or permit any other person to carry on such an activity without a marine licence or fails to comply with any condition of a marine licence. It is a defence for a person charged with an offence under Section 40 in relation to any activity to prove that the activity was carried out for the purpose of saving life, or for the purposes of securing the safety of a vessel, aircraft or marine structure (*'force majeure'*), and that the person took steps within a reasonable time to provide full details of the incident to the licensing authority. (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).
5. All correspondence or communications relating to the licence should be addressed to:

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

Tel: +44 (0)300 244 5046  
Email: [ms.marinelicensing@gov.scot](mailto:ms.marinelicensing@gov.scot)



T: +44 (0)300 244 5046  
E: ms.marinelicensing@gov.scot

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CARRY OUT ANY FORM OF DREDGING WITHIN THE SCOTTISH MARINE AREA AND TO DEPOSIT ANY SUBSTANCE OR OBJECT WITHIN THE SCOTTISH MARINE AREA

Licence Number: 07001/19/0

Reference Number: 07001

The Scottish Ministers (hereinafter referred to as "the licensing authority") hereby authorise:

**Comhairle nan Eilean Siar  
Sandwick Road  
Stornoway  
Isle of Lewis  
HS1 2BW**

to carry out dredging and to deposit in the sea the substances or objects particulars of which are described in Part 2 of the attached Schedule. The licence is subject to the conditions of use set out, or referred to, in Part 3 of the said Schedule.

This licence shall be valid from 01 January 2020 until 31 December 2021.

[Redacted]

Signed: .....

Malcolm Rose

For and on behalf of the licensing authority

Date: 05 November 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:

- a) "the 2010 Act" means the Marine (Scotland) Act 2010
- b) "licensable marine activity" means any activity listed in section 21 of the 2010 Act
- c) "licensee" means the recipient of the licence
- d) "the licensing authority" means the Scottish Ministers
- e) "mean high water springs" ("MHWS") means the average of high water heights occurring at the time of spring tides
- f) "seabed" means the ground under the sea

All geographical co-ordinates contained within this licence are in latitude and longitude format WGS84.

### **1.2. Contacts**

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

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

Tel: +44 (0) 300 244 5046  
Email: [ms.marinelicensing@gov.scot](mailto:ms.marinelicensing@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 operations. 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 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 the provisions of this licence or for any such other reason that appears to be relevant to the authority under section 30(2) or (3) of the 2010 Act.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, vary this licence if satisfied that the variation being applied for is not material.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, 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 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 provide full details of the matter to 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, either 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 by 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 Scottish Ministers under section 29(1) of the 2010 Act.



## **2. PART 2 – PARTICULARS**

### **2.1. Name and address of the producer of the substances or objects:**

As per licensee

### **2.2. Name(s) and address(es) of any other agents acting on behalf of licensee:**

Affric Limited  
Lochview Office  
Loch Duntelchaig  
Farr  
Inverness  
IV2 6AW

### **2.3. Name(s) and address(es) of any contractors or sub-contractors acting on behalf of licensee:**

As per Annex One

See condition 3.1.1

### **2.4. Name, description, registration number and country of registration of vessel(s) to be employed to undertake the deposits:**

As per Annex One

See condition 3.1.2

The vessels referred to above must be so constructed and equipped as to be capable of the proper performance of the licensed activities in compliance with the conditions set out in the Schedule.

### **2.5. Place of production of the substances or objects:**

Lochmaddy Ferry Terminal, within the area bounded by joining points:

57° 35.790' N	007° 09.318' W
57° 35.794' N	007° 09.231' W
57° 35.783' N	007° 09.220' W
57° 35.763' N	007° 09.292' W
57° 35.746' N	007° 09.310' W
57° 35.772' N	007° 09.399' W
57° 35.742' N	007° 09.433' W
57° 35.765' N	007° 09.500' W
57° 35.798' N	007° 09.459' W

57° 35.763' N 007° 09.345' W

As shown in Annex Two.

**2.6. Description and composition of the substances or objects:**

Capital dredging and sea deposit of dredged substances or objects at the Stornoway sea deposit site HE035 to facilitate upgrades to Lochmaddy Ferry Terminal as described in the application dated 22 April 2019, and correspondence submitted in support of the application.

There are three areas to be dredged; berth, manoeuvring and caisson.. The berth and manoeuvring dredge areas will be dredged to -5m Chart Datum ("CD") and the caisson dredge area will be dredged to -8.5m CD. The substances or objects consist of approximately 60.8% clay and silt, 24% sand and 15.2% pebbles, cobbles and boulders.

**2.7. Quantity of substances or objects for deposit within the period of validity of the licence:**

16,000 wet tonnes of capital dredge substances or objects may be deposited between 01 January 2020 and 31 December 2021.

### **3. PART 3 – CONDITIONS**

#### **3.1. General conditions**

##### **3.1.1. Agents, contractors and sub-contractors**

The licensee must provide, as soon as is reasonably practicable prior to the licensed activities commencing, the name and function of any agent, contractor or sub-contractor appointed to undertake the licensed activities.

Any changes to the supplied details must be notified to the licensing authority, in writing, prior to any agent, contractor or sub-contractor undertaking any licensed activity.

The licensee must ensure that only those agents, contractors or sub-contractors notified to the licensing authority are permitted to undertake the licensed activities.

The licensee must give a copy of this licence and any subsequent variations that have been made to this licence in accordance with section 30 of the 2010 Act to any agent, contractor or sub-contractor appointed to carry out any part, or all, of the licensed activities. The licensee must satisfy themselves that any such agent, contractor or sub-contractor is aware of the extent of the licensed activity for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence.

##### **3.1.2. Vessels**

The licensee must submit full details of the vessels to be utilised in respect of the licensed activity, and their anticipated movements, to the licensing authority no later than one month, or at such a time as agreed with the licensing authority, prior to the commencement of the licensed activity. The vessel details provided must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

The licensee must ensure that a copy of this licence and any subsequent variations made to it in accordance with section 30 of the 2010 Act have been read and understood by the masters of any vessels being used to carry on any licensed activity under this licence, and that a copy of this licence is held on board any such vessel.

##### **3.1.3. Force Majeure**

If by any reason of force majeure any substance or object is deposited other than at the site which is described in this licence, 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, vehicle or marine structure determines that it is necessary to deposit the substance or object other than at the specified 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.

#### **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.

#### **3.1.5. Submission of reports to the licensing authority**

Where it would appear to the licensee that there may be a delay in the submission of the reports, studies or surveys 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, studies or surveys ought to have been submitted to the authority under the terms of this licence.

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

#### **3.1.6. Environmental protection**

The licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to minimise damage to the Scottish marine area caused by the licensed activity authorised under this licence.

The licensee must ensure that any unauthorised debris or waste materials arising during the course of the licensed activity are removed from the site of the licensed activity for deposit at an approved location above the tidal level of MHWS.

The licensee must ensure that the risk of transferring non-native species to and from the site is kept to a minimum by ensuring appropriate bio-fouling management practices are implemented during the licensed activity.

#### **3.1.7. Availability of the licence for inspection**

The licensee must ensure that copies of the licence are available for inspection by any persons authorised by the licensing authority at:

- a) the premises of the licensee;
- b) the premises of any agent, contractor or sub-contractor acting on behalf of the licensee;
- c) the site of the licensed activity;
- d) onboard any vessel carrying out the licensed activity; and
- e) any onshore premises directly associated with the licensed activities.

#### **3.1.8. Inspection of the licensed activity**

Any persons authorised by the licensing authority, must be permitted to inspect the licensed activities at any reasonable time.

**3.2. Prior to commencement of the licensed activity**

- 3.2.1.** The licensee must notify the licensing authority of the date of commencement of all licensed activities relating to the licence. Separate notifications are required at the times of commencement and completion.
- 3.2.2.** The licensee must transmit Marine Safety Information broadcasts when considered appropriate, both prior to and throughout, the dredging campaign.

**3.3. During the licensed activity**

- 3.3.1.** The licensee must ensure that the works are carried out in accordance with the Construction Environmental Management Document ("CEMD") (issue 1, dated 22 April 2019) submitted to the licensing authority, or any subsequent version, approved for the purpose by the licensing authority. In the event that the licensee wishes to update or amend the CEMD, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than two month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approvals. The CEMD must remain consistent with the application and supporting information.
- 3.3.2.** Only those substances or objects described in Part 2 of the Schedule shall be deposited under authority of the licence. Any unauthorised materials associated with the substances or objects scheduled for deposit, including debris such as demolition waste, wood, scrap metal, tyres and synthetic materials, must be disposed of on land at an approved location above the tidal level of MHWS.
- 3.3.3.** The licensee must deposit all dredged substances and objects in the following area:

Deposit Area Name and Code: STORNOWAY, HE035

Within the area bounded by joining the points:

58° 10.933' N	006° 22.783' W
58° 10.850' N	006° 22.667' W
58° 11.133' N	006° 22.000' W
58° 11.217' N	006° 22.133' W

Up to a maximum of 16,000 wet tonnes may be deposited within the area during the period of validity of this licence.

- 3.3.4.** All tank/hopper washings must be deposited in the authorised deposit area: STORNOWAY (HE035)
- 3.3.5.** The method of deposit must be:
- BOTTOM DUMPING

**3.3.6.** The licensee must ensure that a log of operations is maintained on each vessel employed to undertake the deposit activity. The log(s) must be kept onboard the vessel(s) throughout the deposit activity, and be available for inspection by any authorised Enforcement Officer. The log(s) must be retained for a period of six calendar months following expiry of the licence, and copies of the log(s) may be requested during that period for inspection by the licensing authority.

**3.3.7.** The log(s) must record in English the following information:

- a) the name of the vessel;
- b) the nature and quantity of each substance or object loaded for deposit;
- c) the date and time of departure from port, and the date and time of arrival at the deposit area(s), on each occasion that the vessel proceeds to the deposit area(s);
- d) the date, time and position of commencement, and the date, time and position of completion, of each deposit;
- e) the course(s) and speed(s) throughout each deposit. (Multiple changes may be recorded as "various");
- f) the weather, including wind strength and direction, sea-state and tidal set throughout each deposit;
- g) the rate of discharge during each deposit, if appropriate, and the duration of each deposit. (If the rate of discharge is not constant, the maximum and mean rates of discharge must be indicated);
- h) comments on the deposit activity, including any explanations for delays in the deposit;
- i) the signature of the Master at the foot of each page of the record.

**3.3.8.** The licensee must liaise with Stornoway Port Authority regarding the deposit of dredged substances or objects.

**3.3.9.** The licensee must ensure that no deviation from the schedule specified in the licence is made without the further written approval of the licensing authority.

#### **3.4. On completion of the licensed activity**

**3.4.1.** The licensee must notify the licensing authority of the date of completion of all licensed activities relating to the licence. Separate notifications are required at the times of commencement and completion.

**3.4.2.** The licensee must submit written reports, to the licensing authority stating the nature and total quantity, in wet tonnes, of all substances or objects deposited under authority of the licence. The written reports must be submitted to the licensing authority annually and on the forms provided by the licensing authority.

**3.4.3.** The licensee must notify Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (e-mail: [sdr@ukho.gov.uk](mailto:sdr@ukho.gov.uk); tel.: 01823 484444) of both progress and on completion of 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.



## NOTES

1. You are deemed to have satisfied yourself that there are no barriers, legal or otherwise, to the carrying out of the licensed activities. 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.
3. Under Section 30 of the Marine (Scotland) Act 2010, the licensing authority may vary, suspend or revoke the licence, if it appears to the authority that there has been a breach of any of the provisions of the licence or for any other reason that appears to be relevant to the authority.
4. Under Section 39 of the Marine (Scotland) Act 2010, it is an offence to carry on a licensable marine activity or cause or permit any other person to carry on such an activity without a marine licence or fails to comply with any condition of a marine licence. It is a defence for a person charged with an offence under Section 40 in relation to any activity to prove that the activity was carried out for the purpose of saving life, or for the purposes of securing the safety of a vessel, aircraft or marine structure (*'force majeure'*), and that the person took steps within a reasonable time to provide full details of the incident to the licensing authority. (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).
5. All correspondence or communications relating to the licence should be addressed to:

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

Tel: +44 (0)300 244 5046  
Email: [ms.marinelicensing@gov.scot](mailto:ms.marinelicensing@gov.scot)