

MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: **MS-00009574**

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

**Comhairle nan Eilean Siar
Council Offices
Sandwick Road
Stornoway
HS1 2BW**

to construct, alter or improve works as described in Part 2. The licence is subject to the conditions set out, or referred to, in Part 3.

The licence is valid from **21 December, 2021** until **31 December, 2024**

Signed:

Neil MacLeod

For and on behalf of the Licensing Authority

Date of issue: 20 December, 2021

1. PART 1 - GENERAL

1.1 Interpretation

In the licence, terms are as defined in Section 1, 64 and 157 of the Marine Scotland Act 2010, and

- a) "**the 2010 Act**" means the Marine (Scotland) Act 2010;
- b) "**Licensed Activity**" means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- c) "**Licensee**" means Comhairle nan Eilean Siar
- d) "**Mean high water springs**" means any area submerged at mean high water spring tide;
- e) "**Commencement of the Licensed Activity**" means the date on which the first vehicle or vessel arrives on the site to begin carrying on any activities in connection with the Licensed Activity;
- f) "**Completion of the Licensed Activity**" means the date on which the Licensed Activity has been installed in full, or the Licensed Activity has been deemed complete by the Licensing Authority, whichever occurs first;

All geographical co-ordinates contained within the licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless otherwise stated.

1.2 Contacts

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

Marine Scotland
Licensing Operations Team
Marine Laboratory
375 Victoria Road
Aberdeen
AB11 9DB
Email: MS.Marinelicensing@gov.scot

1.3 Other authorisations and consents

The Licensee is deemed to have satisfied itself that there are no barriers or restrictions, legal or otherwise, to the carrying on of the Licensed Activities in connection with the licensed activity. The issuing of the licence does not absolve the Licensee from obtaining such other authorisations and consents, which may be required under statute.

1.4 Variation, suspension, revocation and transfer

Under section 30 (1) of the 2010 Act the Licensing Authority may by notice vary, suspend or revoke the licence granted by them if it appears to the Licensing Authority that there has been a breach of any of its provisions. For any such other reason that appears to be relevant to the Licensing Authority under section 30(2) or (3) of the 2010 Act. Under the 2010 Act variations, suspensions, revocations and transfers of licences are subject to the procedures set out in section 31 of the Act.

Under section 30 (7) of the 2010 Act, on an application made by a licensee, the Licensing Authority may vary a licence if satisfied that the variation being applied for is not material.

Under section 30 (8) of the 2010 Act, on an application made by the licensee, the Licensing Authority may transfer the licence from the Licensee to another person.

1.5 Breach of requirement for, or conditions of, licence

Under section 39 of the 2010 Act it is an offence to carry on a Licensable Marine Activity without a marine licence and it is also an offence to fail to comply with any condition of a marine licence.

1.6 Defences: actions taken in an emergency

Under section 40 of the 2010 Act it is a defence for a person charged with an offence under section 39(1) of the 2010 Act in relation to any activity to prove that –
the activity was carried out for the purpose of saving life, or for the purpose of securing the safety of a vessel, aircraft or marine structure ('force majeure'), and
that the person took steps within a reasonable time to inform the Licensing Authority as set out in section 40(2) of the 2010 Act.

1.7 Offences relating to information

Under section 42 of the 2010 Act it is an offence for a person to make a statement which is false or misleading in a material way, knowing the statement to be false or misleading or being reckless as to whether the statement is false or misleading, or to intentionally fail to disclose any material information for the purpose of procuring the issue, variation or transfer of a marine licence or for the purpose of complying with, or purporting to comply with, any obligation imposed by either Part 4 of the 2010 Act or the provisions of this licence.

1.8 Appeals

Under Regulation 3(1) of the Marine Licensing Appeals (Scotland) Regulations 2011 a person who has applied for a marine licence may by summary application appeal to against a decision taken by the Licensing Authority under section 71(1)(b) or (c) or (5) of the Act.

2. PART 2 – PARTICULARS

2.1 Agent

Affric Limited
Lochview Office
Loch Duntelchaig
Farr
IV2 6AW

2.2 Location of the Licensed Activity

LOCH MADDY FERRY TERMINAL,

Below MHWS within the area bounded by joining the points:

57° 35.822' N 007° 09.587' W
57° 35.802' N 007° 09.313' W
57° 35.801' N 007° 09.409' W
57° 35.795' N 007° 09.390' W
57° 35.788' N 007° 09.397' W
57° 35.770' N 007° 09.338' W
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° 35.758' N 007° 09.350' W
57° 35.763' N 007° 09.345' W
57° 35.775' N 007° 09.445' W
57° 35.791' N 007° 09.435' W
57° 35.807' N 007° 09.313' W

As shown in Annex One.

2.3 Description of the Licensed Activity

As per application

As described in the application dated 12 October, 2021 and correspondence submitted in support of the application.

2.4 Descriptions of the materials to be used during the Licensed Activity

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

Materials to be used in construction:

Marine Laboratory, 375 Victoria Road,
Aberdeen AB11 9DB
www.scotland.gov.uk/marinescotland



300 tonnes of steel
66 tonnes of timber
4800 tonnes of concrete
1 tonne of metal
4000 m² of plastic
1000 tonnes of sand
4550 tonnes of gravel
6100 tonnes of cobbles
11400 tonnes of boulders
250 tonnes of asphalt
500 metres of pipes

Temporary materials to be used in construction:

20.5 tonnes of steel
45 tonnes of timber
1100 m² of plastic/synthetic material

Substances or objects to be removed:

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

Less any materials already used or removed under authority of marine licence 07000/19/0

2.5 Contractor and Vessel Details

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1. 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. 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. 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. 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. 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. 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 publicly available by the licensing authority, or by any such party appointed, at their discretion.

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

3.1.10. 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 the commencement of the Licensed Activity

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 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. 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 Upon Completion of the Licensed Activity

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 2025.

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; 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 2024.

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 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.