

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

Licence Number: 07075/20/0

Reference Number: 07075

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

**Scrabster Harbour Trust
Scrabster Harbour
Thurso
Caithness
KW14 7UJ**

to construct, alter or improve works 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 **19 February 2020 until 30 June 2021**.

[Redacted]

Signed:

Daniel Pendrey

For and on behalf of the licensing authority

Date: 19 February 2020

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” 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

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:

RPS
Elmwood House
74 Boucher Road
Belfast
BT12 6RZ

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

As per Annex Two

See condition 3.1.2

2.3. Location of the works (hereinafter referred to as "the site"):

Scrabster Harbour within the area bounded by joining the points:

58° 36.672' N	003° 32.885' W
58° 36.705' N	003° 32.833' W
58° 36.718' N	003° 32.843' W
58° 36.730' N	003° 32.802' W
58° 36.748' N	003° 32.722' W
58° 36.766' N	003° 32.730' W
58° 36.773' N	003° 32.709' W
58° 36.807' N	003° 32.589' W
58° 36.823' N	003° 32.503' W
58° 36.863' N	003° 32.405' W
58° 36.842' N	003° 32.385' W
58° 36.822' N	003° 32.432' W
58° 36.710' N	003° 32.429' W
58° 36.636' N	003° 32.441' W
58° 36.525' N	003° 32.351' W
58° 36.564' N	003° 32.673' W
58° 36.663' N	003° 32.752' W
58° 36.661' N	003° 32.852' W

As shown in Annex One.

2.4. Description of the works:

St. Ola Pier upgrade including: pier reconstruction and extension, construction of rock armour and land reclamation.

As described in application dated 16 July 2019, and correspondence submitted in support of the application.

2.5. Nature and indicative quantity of materials used below Mean High Water Springs level in the construction, alteration or improvement of the works described in Part 1.3 of the licence:

Steel (tubular and sheet piles), 6,500 tonne
Concrete backfill to fuel pipeline, 700 tonne
Tie rods, 110 no
Deck reinforcement, 1,925 tonne
Quay furniture, 38 no
0.4m diameter pipe, 180 m
Geotextile, 14,000 m²
Rock armour stone, 20,000 tonne
Imported infill material, 30,000m³
Dredge material infill, 172,000m³

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 works for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence.

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 and ensure that the works are maintained at all times in good repair.

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 Mean High Water Springs.

The licensee must ensure that only materials listed in Part 2 of the licence are used during the works and 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.

3.1.7. 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 works; and
- d) any onshore premises directly associated with the licensed activities.

3.1.8. Inspection of the works

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

3.1.9. Safety of Navigation

The licensee must remove the works from below the level of Mean High Water Springs, 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.

The licensee must contact the Norther Lighthouse Board about requirements for any temporary Aid to Navigation used during construction.

3.2. Prior to commencement of the works

- 3.2.1.** The licensee must, no later than 7 days prior to commencement of the works, notify the licensing authority of the proposed start date of the works.
- 3.2.2.** The licensee must issue a Notice to Mariners prior to works commencing, clearly stating the nature and duration of the operations.
- 3.2.3.** The licensee must ensure that HM Coastguard, in this case nmoccocontroller@hmcg.gov.uk, The National Maritime Operations Centre is made aware of the works prior to commencement.
- 3.2.4.** 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.
- 3.2.5.** The licensee must ensure that the works are carried out in accordance with a Construction Environmental Management Plan ("CEMP") which the licensee must submit, in writing, to the licensing authority for their written approval, no later than two months prior to the works or at such a time as agreed with the licensing authority. It is not permissible for the works to proceed prior to the granting of such approval. In the event that the licensee wishes to update or amend any of the protocols in the CEMP, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than one 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 CEMP must include a noise management plan, a traffic management plan and a dust management plan. The traffic management plan must include consideration of vehicle wheel cleansing facilities.
- 3.2.6.** The licensee must ensure that the works are carried out in accordance with a Marine Mammal Management Plan ("MMMP") which the licensee must submit, in writing, to the licensing authority for their written approval, no later than two months prior to the works or at such a time as agreed with the licensing authority. It is not permissible for the works to proceed prior to the granting of such approval. In the event that the licensee wishes to update or amend any of the protocols in the MMMP, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their

written approval, no later than one 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 MMMP must include, but not be limited to, the employment of a Marine Mammal Observer ("MMO").

3.3. During the works

- 3.3.1.** 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.
- 3.3.2.** No piling operations must take place between the dates of 12 April and 24 May inclusive. If piling is required between 12 April and 24 May, a separate approval must be sought from the licensing authority.
- 3.3.3.** Subject to the restriction detailed in condition 3.3.2 any piling during the months of April and May must only be carried on during daylight hours.
- 3.3.4.** If any distressed, injured or dead diadromous fish are observed during the works, the licensee must inform the licensing authority within 24 hours.
- 3.3.5.** Soft-start piling must be employed at all times (day and night) between the months of April and September inclusive.
- 3.3.6.** The licensee must ensure that all vessels adhere to the best practice guidelines as set out in the Scottish Marine Wildlife Watching Code at all times.
- 3.3.7.** The licensee must ensure appropriate steps are taken to minimise damage to the foreshore and seabed by the works.
- 3.3.8.** The licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the works.
- 3.3.9.** 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.
- 3.3.10.** The licensee must ensure that the works are marked and/or lighted as required by the Northern Lighthouse Board and the marking to be continued unless and until the licensing authority rescind this direction. If it is desired to display any marks or lights not required by the licence then details must be submitted to the Northern Lighthouse Board and their ruling complied with. The display of unauthorised marks or lights is prohibited.
- 3.3.11.** The licensee must ensure that a navigation light is installed at the end of the refurbished pier and displays the same character as the navigation light that is to be replaced (Q (2). G. 6s).
- 3.3.12.** 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.

3.3.13. 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.

3.3.14. 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.

3.4. On completion of the works

3.4.1. The licensee must, within 7 days of completion of the works, notify the licensing authority of the date of completion of the works.

3.4.2. The licensee must submit a written report regarding the materials used 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; 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 ensure the foreshore and seabed are returned to the original profile, or as close as reasonably practicable, following the completion of the works.

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).
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