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Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

Application for a licence to disturb or injure marine European protected species (EPS) for one of the following purposes

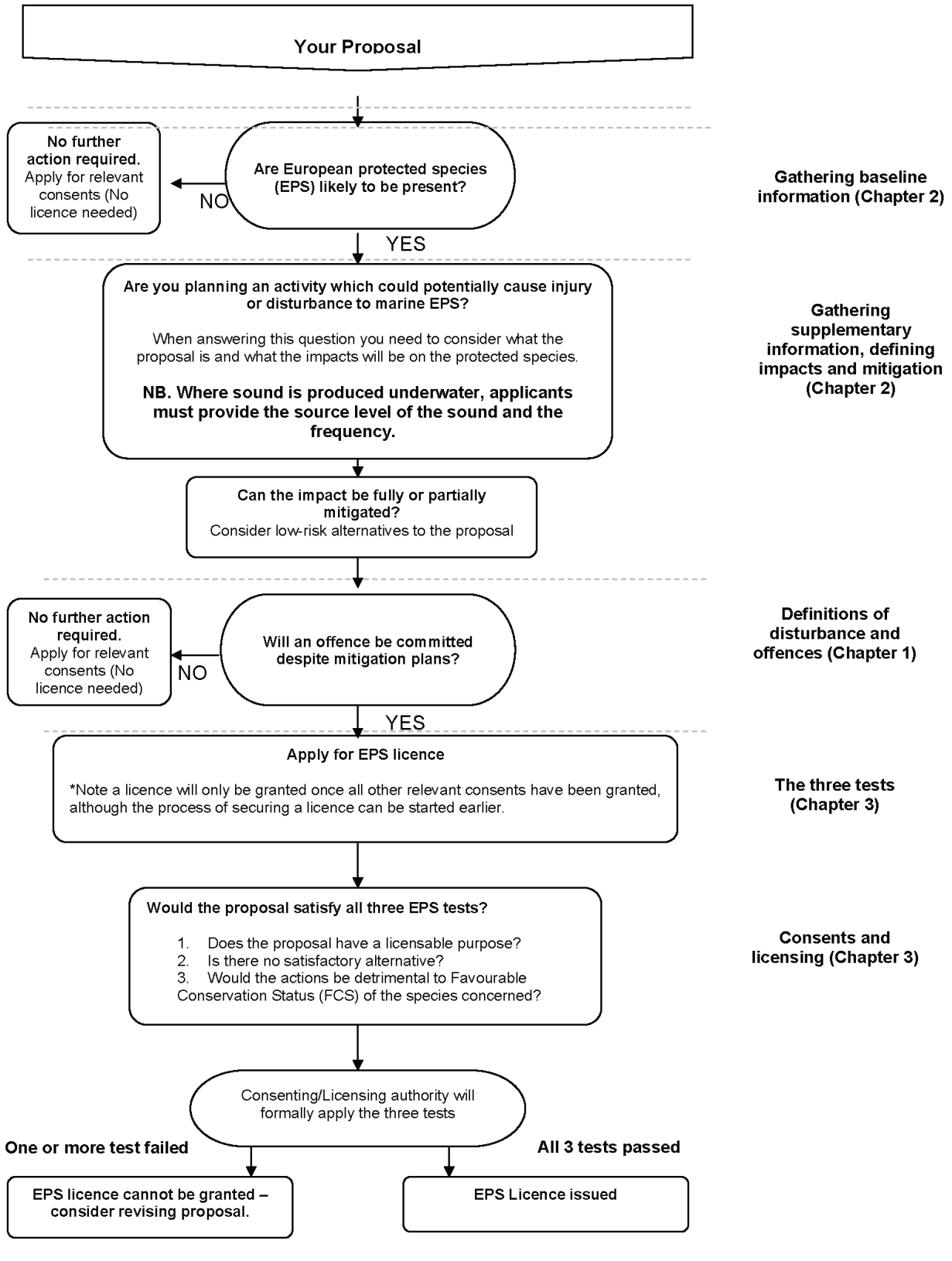
- For preserving public health or public safety
- For an imperative reason of overriding public interest (including those of a social or economic nature and beneficial consequences of primary importance for the environment)
- For preventing the spread of disease
- For preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries.

Please use this application form if you wish to undertake works/activities that would affect European protected species in the Scottish inshore marine area (0 – 12nm).

IMPORTANT: Before completing this form, please read these notes carefully

Applicants are advised to read these notes in conjunction with [The Protection of Marine European Protected Species from injury and disturbance: Guidance for Scottish Inshore Waters](#). If further clarification is needed please contact Marine Scotland Licensing Operations Team (MS-LOT) on 0300 244 5046 or email: ms.marinelicensing@gov.scot

Flowchart showing the decision-making process
 Please refer to the relevant chapter of [The Protection of Marine European Protected Species from injury and disturbance: Guidance for Scottish Inshore Waters](#)



Gathering baseline information (Chapter 2)

Gathering supplementary information, defining impacts and mitigation (Chapter 2)

Definitions of disturbance and offences (Chapter 1)

The three tests (Chapter 3)

Consents and licensing (Chapter 3)



Please complete all relevant sections of the form.

Please ensure that you answer questions fully in order to avoid delays.

The completed application should be sent to Marine Scotland Licensing Operations Team (MS-LOT) at the address below or emailed to ms.marinelicensing@gov.scot.

We will not process unsigned application forms.

Please ensure that you provide appropriate information to support your application. Applicants can provide this supporting information in the form of an EPS Risk Assessment. Guidance can be found in [The Protection of Marine European Protected Species from injury and disturbance: Guidance for Scottish Inshore Waters](#). Please contact MS-LOT if you wish to discuss the level of supporting documentation required for your application. Failure to provide sufficient supporting information may delay the consultation and licensing process.

MS-LOT will aim to determine whether a licence should be issued **within 6 to 8 weeks of acceptance of a completed application**. However, please note that for large scale or complex projects, the determination period may be longer.

If you experience any problems filling in this form, please contact MS-LOT.

Please use this application form if you wish to undertake works/activities that would affect European protected species in the Scottish marine area (0 – 12nm).

Please note that European protected species are also protected in the offshore marine environment (between 12 and 200 nautical miles). Species in this area are protected under The Conservation of Offshore Marine Habitats and Species Regulations 2017.

Do not use this form if your application relates to scientific, research, conservation or educational purposes. Please contact Scottish Natural Heritage (SNH Licensing, Great Glen House, Leachkin Road, Inverness IV3 8NW, Telephone 01463 725000, email licensing@snh.gov.uk or visit [their website](#)) for a licence application for these purposes. SNH also issues licences for the purposes of marking animals or plants in relation to conservation or introducing them to particular areas for conserving natural habitats, and for protecting zoological or botanical collections.

Before a licence can be granted, it is essential that other relevant licences or consents have been secured for the proposed activity (eg Marine licence).

It is the responsibility of the applicant to obtain any other consents or authorisations that may be required.

Part A

Section 1 Personal details

Please provide details of the individual, company or partnership you wish to be named on the licence. The licensee is responsible for ensuring compliance with the licence and its conditions. Under the Conservation (Natural Habitats) Regulations 1994 (as amended) it is an offence to fail to comply with the terms and conditions of a licence.

Section 2 Previous applications

Please provide details of any previous relevant licences.

Part B
Section 3

Species

Please provide details of the species that will be affected by the work, the number likely to be affected and a description of how this number was determined. This information can be described in detail in your supporting information. You will need to provide detailed proposals (to be included in the 'Supporting information') of all the mitigation work that you plan to carry out which will affect European protected species.

Location

Describe the location of the proposed works. Include a list of the latitude and longitude co-ordinates (WGS84) of the boundary points of the proposed project. WGS84 is the World Geodetic System 1984 and the reference co-ordinate system used for marine licence applications. Co-ordinates taken from GPS equipment should be set to WGS84. Coordinates taken from recent admiralty charts will be on a WGS84 compatible datum. Ordnance survey maps do not use WGS84. In a few cases, (e.g. laying of cables or pipelines) it may only be practicable to supply co-ordinates for the start and end points.

Example: For positions read from charts the format should be as in the example: 55°55.555'N 002°22.222'W (WGS84). The decimal point specifies that decimals of minutes are used and the datum is stated explicitly. If seconds are used then the format should be as in the example: 55°55'44"N 2°22'11"W (WGS84).

It is important that the correct positions, in the correct format, are included with this application, as any errors will result in the application being refused or delayed.

Section 4 Consideration of designated sites

Please provide details of any designated sites affected by your proposals. You are advised to consult Scottish Natural Heritage, or other appropriate regulator, if the work you propose to do affects a Natura site, an MPA or a Site of Special Scientific Interest.

Section 5 Activities to be licensed

Please indicate the activities you intend to undertake that would otherwise be unlawful. Provide details of the proposed commencement and completion dates of the activities. **The licence start date will not be backdated, since to commence a project for which a licence has not been obtained may constitute an offence resulting in appropriate legal action.**

It is the licensee's responsibility to apply for any further licences or an extension prior to the expiry of the initial licence.

Section 6 Purpose of the licence application

Please indicate the purpose of the licence application, the first of the legal tests.

Please complete the relevant Annex to provide justification for the licensing purpose. This is the [legal basis of the application](#).

Section 7 Satisfactory alternatives

Please provide your consideration of why there is no satisfactory alternative. This must include all other options that have been evaluated, the alternative sites that were considered by you and why they were rejected (if no other sites were considered, you must provide the reasons why), as well as all alternative methods of carrying out the work and alternatives dates / timings.

In relation to each alternative considered, please provide an explanation of why you consider it to be satisfactory or unsatisfactory. In respect of any alternative sites please provide the location(s) and details of the alternative site(s), or your views on how the activity/proposal might have been achieved differently, and any other helpful information; e.g., pros and cons of alternative sites, or whether there is likely to be demand for all suitable sites to be used to meet an identified need. Please explain how this conclusion was reached.

Section 8 Summary of the planning / licensing position

Detail all consents and licences required for the proposed project and indicate those that you have applied for or received.

Section 9 Noise Monitoring

Under the Marine Strategy Regulations (2010), there is now a requirement to monitor loud, low to mid frequency (10Hz to 10kHz) impulsive noise. This includes use of seismic airguns, other geophysical surveys (<10kHz), pile driving, explosives and certain acoustic deterrent devices. This monitoring requires completion of a form at the application stage (giving details of the proposed work) as well as completion of a 'close-out' form (giving details of the actual dates and locations where the activities occurred). The close-out form should be returned within 12 weeks of completing the 'noisy' activity or, in the case of prolonged activities such as piling for harbour construction or wind farms, at quarterly intervals or after each phase of foundation installation.

These forms are available at: <https://mnr.jncc.gov.uk/>

Section 10 Privacy notice

This section briefly describes the Scottish Ministers responsibilities in relation to Data Protection based on the requirements of the data protection laws and the Environmental Information (Scotland) Regulations 2004 and the Freedom of Information (Scotland) Act 2002.

Part D

Section 11 Declaration and warning

It is important to read the Declaration and Warning sections before signing the application form.

Site visits and compliance checks

It is possible that the licensing authority may undertake a site visit prior to the issue of a licence. The majority of site visits will be arranged several days in advance and will be conducted in the presence of the licensee (or applicant) however there may be occasions when a site visit will be made at short notice.

Licensees should be aware that they may receive a request for a site visit by the licensing authority, or a person authorised by the licensing authority, to assess site conditions against the conditions of the licence. It is essential that if any of the agreed mitigation measures contained in the application and supporting information are changed for any reason, the licensing authority is informed as soon as possible.

The Licensing authority will monitor compliance with licences issued based on the information included in licence reports.

Where to seek further information

Further information can be obtained from Licensing Operations Team at the address below.

If your proposal relates to one of the purposes for which SNH is the licensing authority, please contact your local office of SNH.

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

Tel: 0300 244 5046
Email: MS.marinelicensing@gov.scot

Disclaimer

While every effort has been made to ensure the information contained in this document is accurate, nothing in this document should be taken to replace the current legislation in force at this time. You are advised to obtain qualified legal advice in relation to your rights and responsibilities under the 1994 Regulations and other legislation.

Part A. The Applicant: Personal details

These questions relate to the person who will be the **named licensee**. The licence can be issued to an individual or a company or a partnership and the licensee will be responsible for ensuring compliance with the licence and the conditions of the licence. Under the Conservation (Natural Habitats) Regulations 1994 (as amended) it is an offence to fail to comply with any condition imposed by a licence.

1. Name of applicant

Title: Forename(s): Surname:

Company Name:

Business Title (if Appropriate):

Address:

Tel no. (inc. dialling code):

Email address:

2. **The Applicant: Previous applications:** [NAC to advise](#)

Have you previously held a wildlife licence issued in the UK? (please tick as appropriate)

Yes No (If yes, please complete below, if no, please go to Part B)

Who issued the licence?

Licence number (most recent licence)

Year in which the licence was issued.

What species were covered by the licence?

What activity was covered by the licence e.g. disturb, injure?

Part B. The Application

3. Species

(a) Please indicate which species is / are affected by the proposed works.

Common name(s):

Harbour porpoise
Bottlenose dolphin
Common dolphin
Minke whale

Scientific name(s)

Phocoena phocoena
Tursiops truncatus
Delphinus delphis
Balaenoptera acutorostrata

(b) How many individual animals will be affected by licensed work?

Details for number of individuals affected and how this was calculated for each species is detailed in Section 2.2.1 of the attached risk assessment

Please provide a description of how this number was calculated / estimated

Details for number of individuals affected and how this was calculated for each species is detailed in Section 2.2.1 of the attached risk assessment

(c) **Location of proposed licensed action**

Latitude and Longitude co-ordinates (WGS84) defining the extent of the project. Please continue on a separate sheet if necessary.

LATITUDE								LONGITUDE								
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W

Location: Millport, Great Cumbrae, North Ayrshire.
55°44.8333 N 4°55.6833 W

Latitude and longitude coordinates defining extent of project provided as Appendix 01 and Figure 1 as per the Marine Licence

- (d) Provide a brief description of the proposed activity and the methods to be used.
Detailed information should be included in your Supporting Information
Please provide details of the source levels and frequencies of underwater noise if relevant

Activities will include:

- Possible excavation of rock foreshore to form a trench for the toe foundation to the foreshore rock breakwaters, using either hydro-demolition or a rock cutting wheel
- Placement of rock armour using long-reach excavators with grab to form offshore breakwaters and foreshore rock structures
- Vessel movements

Impacts considered are:

- Risk of injury during excavation and rock placement works
- Increased collision risk and disturbance from vessels (including PTS and TTS from vessel noise)
- Disturbance

A full description of these activities and the source levels and frequencies of underwater noise are provided in Section 2 of the attached Risk Assessment

- (e) Briefly state how you will minimise the impact of your proposed work on European protected species.
Detailed information should be included in your Supporting Information.

Mitigation strategy / best practice measures are discussed in Section 3 of the attached risk assessment. Although no mitigation measures are required, best practice measures will be undertaken, such as adherence to the Scottish Marine Wildlife Watching Code (www.nature.scot/marinecode) to minimise disturbance including:

- A nominated competent observer on the bridge of all vessels, including barges, and will keep watch for marine mammals (and basking sharks) during transit to and from the work site.
- Any sightings will be communicated to the Master of the vessel as soon as is practicable and the following actions, as per the Scottish Marine Wildlife Watching Code, implemented:
 - o The Master of the vessel will ensure that marine mammals (and basking sharks) are avoided to a safe distance (100 m or more) in all possible circumstances; and
 - o The Master of the vessel will minimise high powered manoeuvres where this does not impair safety.

4. Consideration of designated sites

Designated Areas: National Nature Reserves (NNR), Sites of Specific Scientific Interest (SSSI), Special Protection Area (SPA), Special Areas of Conservation (SAC), Ramsar sites, Marine Protected Areas (MPA). Information on designated sites is available on Scottish Natural Heritage website (<http://gateway.snh.gov.uk/sitelink/>) or from your local SNH office.

- (a) Will any part of the proposed activity fall within /or adjacent to an area covered by a designated site eg SSSI, SAC, MPA? Yes No
- (b) Please give the name of the designated site(s) and either the outcome of your consultations or the reason why you have not consulted (see note 4). Please enclose any relevant correspondence.

Designated sites are discussed in Section 2.3 of the attached risk assessment.

None are designated for marine mammals.

Consultation has been undertaken with NatureScot, MS-LOT and SEPA. Details are provided in the SEIAR.

Impacts at Kames Bay SSSI are considered in the SEIAR and are minor adverse / negligible at worst.

5. Activities to be Licenced

Proposed Methods

(a) Please complete all relevant columns in the table below to indicate the methods you propose to use, the activity involved and the time period in which you propose to use each method. This information will be used when preparing the licence to cover activities that would otherwise be unlawful, and failure to give full details may result in an inappropriate licence being issued.

Activity to be licensed (please tick)					Time period		
Capture	Kill (exceptional circumstances only)	Injure	Transport	Disturb/ Harass	Method to be used, (e.g. piling)	From	To
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	excavation	Mar 2023	Dec 2023
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	rock placement (offshore)	Sept 2022	Mar 2023
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	rock placement (foreshore)	Mar 2023	Dec 2023
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	vessel movements	Aug 2022	Dec 2023
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			

6. Purposes of the licence application (tick one box only)

A licence can only be issued if 3 specific legal tests are met. The section below relates to the first of these tests. The options shown are taken from the **Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)**.

Please indicate which purpose relates to the proposed works

(a) Preserving public health or public safety (we will require evidence that there is a risk to public health or public safety e.g. an imminent risk of flooding) Regulation 44(2)(e)

Complete Annex A

(b) Imperative reasons of overriding public interest (*including those of a social or economic nature and beneficial consequences of primary importance for the environment*) Regulation 44(2)(e)

Complete Annex B

(c) Preventing the spread of disease Regulation 44(2)(f)

Complete Annex C

(d) Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries Regulation 44(2)(g).

Complete AnnexD

7. Satisfactory alternatives

This relates to the second of the legal tests which must be satisfied. Please explain why there is no satisfactory alternative to carrying out the proposed work affecting the species. You must describe all possible alternatives which were considered and why they were considered unsuitable. You must also consider the option of not undertaking the work. **It is not acceptable to state that ‘there is no alternative’.**

Alternative options were considered in the Scheme Recommendation Report (SRR) (Royal HaskoningDHV, 2018) which presented the findings of the work completed to date, including consultation with the community of Millport and relevant organisations, to develop an appraisal of the potential scheme options.

However, to provide protection to Millport there are no satisfactory alternatives which do not involved construction and reinforcement of the existing flood defences if they are to continue to be effective and are to remain operational. Thus, it is consider that the ‘no satisfactory alternative test’ has been met.

8. Other Licences / Consents

Please detail below all licences / consents you have applied for or received. **Before a licence can be granted, it is essential that other relevant licences or consents have been secured for the proposed activity (eg Marine licence).**

Type of Licence / Consent (e.g. Marine Licence, Local Planing Authority, Local Works Licence)	Date Applied for	Reference no.	Date of issue of licence / consent
Marine Licence (in planning)	Application submitted 17th December 2021	Not yet issued	N/A
Flood Act consent	Scheme confirmed by NAC Cabinet on 10th November 2020	N/A	N/A
Deemed Planning Permission	8th April 2021	FRM-310-001	5th August 2021
Crown Estate Scotland Consent / Licence	Discussions ongoing	Discussions ongoing	Discussions ongoing
Clydeport Works Licence	Discussions ongoing - licence to be applied for by contractor	Discussions ongoing - licence to be applied for by contractor	Discussions ongoing - licence to be applied for by contractor

Harbour Revision Order

Marine Laboratory, 375 Victoria Road,
Aberdeen AB11 9DB
<http://www.gov.scot/Topics/marine/Licensing/marine>



9. Noise Monitoring

Please indicate if any of the following noise generating activities will be taking place during the operations:

Use of explosives Piling Use of Acoustic Deterrent Devices
Survey equipment operating in the range 10 Hz – 10kHz

If you have ticked any of the above boxes please complete a Proposed Activity form in the Marine Noise Registry at: <https://mnr.jncc.gov.uk/>.

Please note the form must only be completed once for each activity. If you have already completed a form for this activity (eg through the marine licensing process) please give details.

n/a

EPS licence applications will not be accepted until this form has been completed and submitted.

11. **Privacy notice**

The Scottish Government’s Marine Scotland Licensing Operations Team (MS-LOT) has a range of statutory responsibilities including determining applications for licences to disturb or injure marine European protected species (EPS) under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 and Basking shark licences under the Wildlife and Countryside Act 1981 (as amended).

MS-LOT will, where necessary, process personal information including: names, addresses, email addresses and telephone numbers to determine a licence application. Personal information will be stored securely in the Scottish Government’s official corporate record.

A full privacy notice can be found at: <http://www.gov.scot/Topics/marine/Licensing/marine/PrivacyNotice>. If you are unable to access this, or you have any queries or concerns about how your personal information will be handled, contact MS-LOT at: Marine Scotland - Licensing Operations Team, Marine Laboratory, 375 Victoria Road, Aberdeen, AB11 9DB. Email: ms.marinelicensing@gov.scot

to tick once all complete

Have you remembered to enclose Supporting Information with your application, as described in the accompanying guidance? Please check

- | | |
|--|-------------------------------------|
| Completed Application form | <input type="checkbox"/> |
| Completed Annex | <input checked="" type="checkbox"/> |
| Map / Chart | <input checked="" type="checkbox"/> |
| Correct co-ordinates | <input checked="" type="checkbox"/> |
| Additional information / EPS risk assessment | <input checked="" type="checkbox"/> |

Part C. Declarations

11. I have read and understand the guidance provided in this application form. I declare that the particulars given are correct to the best of my knowledge and belief, and I apply for a licence in accordance with these particulars.

I authorise employees or representatives of the Scottish Ministers to enter the site which is subject to this application for the purpose of monitoring and inspecting the permitted works.

Warning

Under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) it is an offence to fail to comply with the conditions imposed by a licence. The licensee is responsible for ensuring compliance with the licence.

The Scottish Ministers can modify or revoke a licence at any time, provided there are good reasons. Any licence that may be issued is likely to be revoked immediately if it is discovered that false information was provided and resulted in the issue of a licence.

Under the Conservation (Natural Habitats, &c.) Regulations 1994, any person who in order to obtain a licence knowingly or recklessly makes a statement or representation, or furnishes a document or information which is false in a material particular, shall be guilty of an offence and may be liable to criminal prosecution. Any person found guilty of such offences is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (currently £5,000), or to both imprisonment and a fine.

Note: Previous convictions for wildlife offences will be taken into account and in some cases may mean that the Scottish Ministers do not consider it appropriate to grant a licence.

Arthur to sign

Signature of the
Applicant

[Redacted Signature]

Date 27/1/2022

(The person named at part 1)

Name in BLOCK
LETTERS

[Redacted Name]

Note – If signing on behalf of a company, please append your signature with “on behalf of *Company Name*”.

The completed application should be signed and sent to Marine Scotland Licensing Operations Team (MS-LOT) at the address below or emailed to MS.Marinelicensing@gov.scot

Please remember to include all supporting information.

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

Disclaimer

While every effort has been made to ensure the information contained in this document is accurate, nothing in this document should be taken to replace the current legislation in force at this time. You are advised to obtain qualified legal advice in relation to your rights and responsibilities under the 1994 Regulations and other legislation.

Marine Laboratory, 375 Victoria Road,
Aberdeen AB11 9DB
<http://www.gov.scot/Topics/marine/Licensing/marine>



Annex A

Only to be completed if you selected for *Preserving public health or public safety* in Question 6 of the application form

Please complete all questions

Give details of the risk to public health or safety

N/a

How has the risk been identified. Please give details of any expert advice received.

N/a

How will the proposed activity address the identified risk

N/a

Annex B

Only to be completed if you selected for *Imperative reasons of overriding public interest (including those of a social or economic nature and beneficial consequences of primary importance for the environment)* in Question 6 of the application form

Please complete all questions

What benefits will be provided by the proposed activity? Give details and indicate if they are social, economic or environmental. Please indicate if the benefits are short or long term.

The Proposed Scheme as a whole aims to minimise the wave energy that can reach the sea walls around the shores of Millport Bay, to reduce wave overtopping volumes and wave loading during storms, and the associated flood risk and chance of failure of the coast protection structures. The town is designated as a Conservation Area for its historic townscape, and tourism is a strong component of the local economy of Millport. Without the Proposed Scheme there could be detrimental effects to the towns infrastructure and economy.
Benefits will be environmental, social and economic, and long term

What public interest will be served? Who will benefit from the proposed activity? Does the proposed activity address a need?

Flood protection of a historic Scottish town. Residents, business owners and visitors will benefit from the Proposed Scheme, by protecting buildings, roads and infrastructure and reducing impacts from loss of revenue from visitors.

Why is it imperative the proposed activity goes ahead?

Millport is at risk from flooding and erosion due to overtopping and potential failure of the existing coast protection structures. There is a history of flooding due to overtopping of the sea wall adjacent to the harbour, with minor to moderate flooding occurring most years. Many residents have taken individual action to reduce flood damages, such as installing flood boards to their doors and storing sandbags in case of need. Flooding also affects use of the coastal road and promenade, as well as impacting on revenue from visitors.

Does the proposed activity support any local regional or national policies? Please give details. Are you fulfilling a statutory role?

This risk is reflected by the SEPA third generation flood map. The flood protection risks to Millport are also recognised in Scotland's national flood risk strategy, with the delivery of a flood protection scheme for Millport prioritised at 10 in a list of 42 proposed schemes for implementation between 2016 and 2021, considered in further detail in the Ayrshire Flood Risk Management Strategy (SEPA, 2015).

SEPA (2015) Flood Risk Management Strategy, Ayrshire. Available at:
http://apps.sepa.org.uk/FRMStrategies/pdf/lpd/LPD_12_Full.pdf. Accessed 14/12/202

Annex C

Only to be completed if you selected for *Preventing the spread of disease* in Question 6 of the application form

Please complete all questions

What disease(s) is / are at risk of being spread if the proposed activity does not go ahead? Please give details of any expert advice received.

N/A

How will the proposed activity prevent the spread of disease? Please give details of any expert advice received.

N/A

Annex D

Only to be completed if you selected for *Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries* in Question 6 of the application form.

Please complete all questions

What serious damage has occurred or will occur if the proposed activity does not go ahead. Please give details of any expert advice received.

N/a

How will the proposed activity prevent serious damage? Please give details of any expert advice received.

n/a