

MARINE SCOTLAND ACT 2010, PART 4 MARINE LICENSING

LICENCE TO DEPOSIT ANY SUBSTANCE OR OBJECT IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00008844**

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

**Moray Council
Environmental Services
Moray Council
High Street
Elgin, Moray IV30 1BX**

to deposit any substance or object 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 **16 March, 2021** until **15 March, 2024**

Signed:

Ellie Noble

For and on behalf of the Licensing Authority

Date of issue 15 March, 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 Moray Council
- 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

as per Licensee

2.2 Location of the Licensed Activity

Burghead Harbour, within the area bounded by joining the points:

Place of production of the substances or objects to be deposited

57° 42.040' N, 003° 30.160' W
57° 42.090' N, 003° 30.020' W
57° 42.100' N, 003° 29.900' W
57° 42.170' N, 003° 29.910' W
57° 41.990' N, 003° 29.980' W
57° 42.160' N, 003° 29.890' W
57° 42.090' N, 003° 29.730' W
57° 42.010' N, 003° 30.140' W
57° 42.060' N, 003° 30.120' W
57° 42.040' N, 003° 29.930' W
57° 41.990' N, 003° 30.020' W
57° 42.120' N, 003° 29.760' W
57° 42.100' N, 003° 29.720' W

As shown in Annex One.

2.3 Description of the Licensed Activity

Maintenance dredging of Burghead harbour and deposit of dredged material at Burghead deposit site

As described in application dated 16 March, 2020 and correspondence submitted in support of the application.

2.4 Descriptions of the substances or objects to be deposited

MS-00008844

15 March, 2021

This licence authorises the deposit of the undernoted substances and objects required in connection with the licensed activity, subject to the amounts as specified below:

30,800 wet tonnes of maintenance dredge substances or objects may be deposited between 16 March 2021 and 15 March 2022.

30,800 wet tonnes of maintenance dredge substances or objects may be deposited between 16 March 2022 and 15 March 2023.

30,800 wet tonnes of maintenance dredge substances or objects may be deposited between 16 March 2023 and 15 March 2024.

2.5 Contractor and Vessel Details

As per Annex Two

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must at all times deposit substances and objects in accordance with the licence, the application and the plans and programmes approved by the Licensing Authority.

3.1.2 The Licensee must ensure that only the materials listed in Part 2 of the licence are used during the execution of the Licensed Activity and that all materials, substances or objects used during the execution of the Licensed Activity are inert and do not contain toxic elements which may be harmful to the marine environment, the living resources which it supports or human health.

3.1.3 Only those substances or objects described in Part 2 of the Schedule shall be deposited under authority of the licence.

a) 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, shall be disposed of on land at an approved location above the tidal level of Mean High Water Springs.

b) All tank/hopper washings shall be deposited in the authorised sea deposit area(s).

3.1.4 In the event of any breach of health and safety or environmental obligations relating to the Licensed Activity during the period of the licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority within 24 hours of the incident occurring. Confirmation of remedial measures taken and/or to be taken to rectify the breach must be provided, in writing, to the Licensing Authority within a period of time to be agreed by the Licensing Authority.

3.1.5 The Licensee must remove the materials, substances or objects from below the level of Mean High Water Springs, or make such alterations as advised by the Licensing Authority, 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 approval by the Licensing Authority. The Licensee shall be liable for any expense incurred.

3.1.6 If governmental assistance is required (including UK governmental assistance or the assistance of any UK devolved government) to deal with any emergency arising from:

a) the failure to mark and light the deposited objects as required by this licence;

b) the maintenance of the deposited object or

c) the drifting or wreck of the deposited object,

to include the broadcast of navigational warnings, then the Licensee is liable for any expenses incurred in securing

such assistance.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must provide the name and function of any agent, contractor or sub-contractor appointed to undertake the Licensed Activities, as soon as is reasonably practicable prior to the Licensed Activities commencing.

3.2.2 The Licensee must, prior to and no less than seven calendar days before the Commencement of the Licensed Activity, notify the Licensing Authority, in writing, of the date of Commencement of the Licensed Activity authorised under this licence.

3.2.3 The Licensee must issue local notification to marine users – including fisherman’s organisations, neighbouring port authorities and other local stakeholders – to ensure that they are made fully aware of the Licensed Activity.

3.3 During the Licensed Activity

3.3.1 Only those persons acting on behalf of, and authorised by, the agent or the Licensee shall undertake the deposit operations.

3.3.2 The Licensee shall ensure that a log of activities is maintained on each vessel employed to undertake the deposit operations. The log(s) shall be kept onboard the vessel(s) throughout the deposit operations, and be available for inspection by any authorised Enforcement Officer. The log(s) shall 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. The log(s) shall 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 authorised sea deposit area(s), on each occasion that the vessel proceeds to the designated sea deposit area(s);
- d) the date, time and position of commencement, and the date, time and position of completion, of each deposit operation;
- e) the position of the vessel at intervals throughout each deposit operation;

- f) the course(s) and speed(s) throughout each deposit operation. (Multiple changes may be recorded as "various");
- g) the weather, including wind strength and direction, sea-state and tidal set throughout each deposit operation;
- h) the rate of discharge during each deposit operation, if appropriate, and the duration of each deposit operation. (If the rate of discharge is not constant, the maximum and mean rates of discharge should be indicated);
- i) comments on the deposit operations, including any explanations for delays in the deposit operations;
- j) the signature of the Master at the foot of each page of the record

3.3.3 In the event of the Licensed Activity being discontinued the materials used or substances and objects deposited under the authority of the licence shall be removed to the satisfaction of the Licensing Authority.

3.3.4 The Licensee must ensure that only those agents, contractors or sub-contractors notified to the Licensing Authority are permitted to undertake the Licensed Activity.

3.3.5 The Licensee must ensure that a copy of the licence is given to each contractor employed to undertake the licensed activities. The Licensee must also ensure that copies of the licence and all other relevant documents are available for inspection by any authorised Enforcement Officer at:

- a) the premises of the Licensee;
- b) the premises of any agent acting on behalf of the Licensee; and
- c) site of the Licensed Activity/on board the vessel(s) employed to undertake the Licensed Activities.

3.3.6 The Licensee must deposit the substances or objects described in Part 2 of the marine licence in the following authorised sea deposit area: Burghead CR030: Up to a maximum quantity of 92,400 Wet Tonnes may be deposited during the period of validity of the licence, within the area bounded by joining the points: within a circle centred at 57° 43.500' N, 003° 31.000' W with a radius of 0.5 nautical miles.

3.3.7 Any person authorised by the Licensing Authority must be permitted to inspect the site at any reasonable time.

3.3.8 The Licensee must ensure that a dedicated watch is kept by a trained marine mammal observer ("MMO") or an appropriately knowledgeable person following the general guidance for, and acting in the role of an MMO. The watch must begin at least 20 minutes prior to the deposit activities. No deposit activities should take place if marine mammals are observed during the 20 minute watch, the Licensee must ensure that deposited activities do not commence until no marine mammals have been observed within 200 metres buffer zone for at least 5 minutes.

3.3.9 The Licensee must ensure that where the sea state is greater than or equal to sea state 3, during the hours of darkness or where visibility is less than 300 metres, passive acoustic monitoring ("PAM") is conducted for 20 minutes prior to the deposit activities. If marine mammals are detected, then deposit activities must not commence until there

is a period of not less than 10 minutes where no detections are made.

3.3.10 The Licensee must ensure that the deposit of dredged substances and/or objects are confined to areas of water depth greater than 25 metres.

3.4 Upon Completion of the Licensed Activity

3.4.1 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.

3.4.2 The Licensee must, no later than 14 days following the Completion of the Licensed Activity notify the Licensing Authority, in writing, of the date of the Completion of the Licensed Activity.

3.4.3 The Licensee must notify the UK Hydrographic Office of the Completion of the Licensed Activity to facilitate the promulgation of maritime safety information and updating of admiralty charts and publications through the national Notice to Mariners system.

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.