

MARINE SCOTLAND ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT, ALTER OR IMPROVE WORKS AND DEPOSIT ANY SUBSTANCE OR OBJECT IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00009067**

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

**Kilfinichen Farms LLP
Kilfinichen Estate, Tiororan
Isle of Mull**

United Kingdom PA69 6ER

to construct, alter or improve works and 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 **31 December, 2020** until **31 March, 2021**

Signed:

Rebecca Bamlett

For and on behalf of the Licensing Authority

Date of issue 16 December, 2020

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 Kilfinichen Farms LLP
- 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
Inverness IV2 6AW

2.2 Location of the Licensed Activity

Kilfinichen Pier,

56° 22.853' N 006° 03.198' W
56° 22.775' N 006°02.976' W
56° 22.726' N 006°03.161' W
56° 22.832' N 006°03.299' W

As shown in Annex One.

2.3 Description of the Licensed Activity

Construction of a new timber loading pier consisting of the following:

Construction of 140m long rock armoured causeway with a 60m long hammerhead;

Installation of an access bridge and floating pontoon; and

Relocation of an existing pontoon.

As described in application dated 23 August, 2018 and correspondence submitted in support of the application.

2.4 Descriptions of the materials to be used during Licensed Activity and substances or objects to be deposited

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

Materials used in construction

Concrete (incl. bankseat, pontoon base and jacking points), 144 tonnes
Steel (incl. jacking points and furnishings), 15 tonnes
Boulders, greater than or equal to 256.0mm (rock armour), 22,500 tonnes
Cobbles and boulders (rock fill) greater than or equal to 64.0mm, 65,000 tonnes
Geotextile (synthetic geotextile fabric), 1,700m²

Substances or objects to be deposited:

Access bridge and floating pier, 20m x 10m x 50m
Existing pontoon, 3 No. x 10m
Pontoon metal access bridge, 12m x 2m
Anchor chains, 200m
Anchors, 6 No.

Less any materials used and substances and/or objects deposited under marine licence numbers 06790/19/0 and 06790/20/0.

*Indicative only

2.5 Contractor and Vessel Details

As Per Annex Two

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 and deposited substances or objects 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 Activity commencing, the name and function of any agent, contractor or sub-contractor appointed to undertake the Licensed Activity. 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.

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

3.1.4. 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 Activity. 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.

3.1.5. 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.

3.1.6. 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.

3.1.7. 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.

3.1.8. 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.

3.1.9. 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 Licensing Authority under the terms of this licence.

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

3.1.11. The Licensee must ensure that all required mitigation identified in the Environmental Impact Assessment ("EIA") process is implemented to address significant environmental effects. This must include the Schedule of Mitigation in chapter 8 of the EIA report.

3.1.12. 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.

3.1.13. The Licensee must ensure that any debris or waste materials arising during the course of the Licensed Activity are removed from the site, as soon as is reasonably practicable, for disposal at a location above MHWS approved (as appropriate) by the Scottish Environment Protection Agency ("SEPA").

3.1.14. The Licensee must ensure that all substances, objects and materials used during the execution of the Licensed Activity 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.

3.1.15. The Licensee must ensure SEPA's biosecurity and non-native species guidance is followed during the Licensed Activity to reduce the risk of transferring non-native species to and from the site.

3.1.16. The Licensee must ensure that the Licensed Activity is carried out in accordance with the Navigational Risk Assessment, dated 16th August 2018, submitted in support of the application.

3.1.17. 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; and
- c) any onshore premises directly associated with the Licensed Activity.

3.1.18. Any persons authorised by the Licensing Authority, must be permitted to inspect the Licensed Activity at any reasonable time. The Licensee must, on being given reasonable notice by the Licensing Authority (of at least 72 hours), provide transportation to and from the site (weather permitting) for any persons authorised by the Licensing

Authority to inspect the site.

3.1.19. Should the Licensee proceed to undertake the Licensed Activity under the authority of this licence, the Licensed Activity authorised under the previous marine licence in favour of Kilfinichen Farms LLP, dated 20 April 2020 (licence number 06790/20/0) is not permitted.

3.2 Prior to the commencement of the Licensed Activity

3.2.1. The Licensee must, no later than 7 days prior to Commencement of the Licensed Activity, notify the licensing authority of the proposed start date of the Licensed Activity.

3.2.2. The Licensee must ensure that local notice to mariners and fishermen's organisations are made fully aware of the activity through local notice to mariners.

3.2.3. The Licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre, is made aware of the Licensed Activity prior to commencement.

3.3 During the Licensed Activity

3.3.1. The Licensee must ensure that only the materials and deposits listed in Part 2 of this licence are deposited during the execution of the Licensed Activity and that all materials, substances or objects deposited 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.

3.3.2. The Licensee must co-ordinate the movements of any vessels utilised in respect of the Licensed Activity with the vessel movements of any other developments or activities, taking place at the same time, to spread out vessel activity as far as is practically possible so that it does not occur simultaneously.

3.3.3. The Licensee must ensure that all stakeholders and users of the area who may be subject to temporary disruption as a result of the Licensed Activity are kept informed with regards to the progress of the Licensed Activity as far as is reasonably practicable.

3.3.4. 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.

3.3.5. The Licensee must ensure that the works and deposited substances and objects are maintained at all times in good repair.

3.3.6. In the event of the Licensed Activity being discontinued prior to its completion, the Licensee must remove the Licensed Activity and clear the site to the satisfaction of the Licensing Authority.

3.3.7. 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 Licensed Activity as required by licence;
- b) The maintenance of the Licensed Activity ; or
- c) The drifting or wreck of the Licensed Activity.

The Licensee is liable for any expenses incurred in securing such assistance.

3.3.8. The Licensee must ensure that all recoveries of wreck material are reported to the Receiver of Wreck within 28 days of recovery. Failure to report the recovery of wreck material to the Receiver is a criminal offence. Additional information and a report of wreck and salvage form can be found at: www.gov.uk/guidance/wreck-and-salvage-law.

3.3.9. The Licensee must ensure that no deviation from the schedule specified in the licence is made without the further written consent of the Licensing Authority.

3.3.10. The Licensee must remove all substances, objects or materials temporarily deposited during the Licensed Activity before the expiry of this licence.

3.4 Upon Completion of the Licensed Activity

3.4.1. The Licensee must, within 7 days of Completion of the Licensed Activity, notify the licensing authority of the date of completion of the Licensed Activity.

3.4.2. The Licensee must, within 28 days of Completion of the Licensed Activity or within 28 days of the date of expiry of the licence, whichever is the sooner, submit a written report to the licensing authority stating the nature and quantity of all materials placed and removed under authority of the licence. Where appropriate, nil returns must be provided.

3.4.3. The Licensee must, within 28 days of completion of the Licensed Activity, supply Source Data Receipt, The Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN (email: sdr@ukho.gov.uk; tel.: 01823 337900) with a copy of the 'as built plans', in order that all necessary amendments to nautical publications are made. The Licensee must notify the licensing authority of the notification at the time it is made.

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16 December, 2020

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.