

MARINE SCOTLAND ACT 2010, PART 4 MARINE LICENSING

LICENCE TO DEPOSIT OR USE ANY EXPLOSIVE SUBSTANCE OR ARTICLE IN THE SCOTTISH MARINE AREA AND TO REMOVE ANY SUBSTANCE OR OBJECT FROM THE SEABED WITHIN THE MARINE AREA AND TO DEPOSIT ANY SUBSTANCE OR OBJECT IN THE SCOTTISH MARINE AREA

Licence Number: **MS-00009071**

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

**Kincardine Offshore Windfarm Limited
The Silver Fin Building
455 Union Street
Aberdeen
AB11 6DB**

to deposit or use any explosive substance or article, to remove any substance or object and 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 **10 April, 2021** until **09 August, 2021**

Signed:

Stef Sweeting

For and on behalf of the Licensing Authority

Date of issue 09 April, 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 Kincardine Offshore Windfarm Limited
- 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

Kincardine Offshore Windfarm, at a point located by the coordinates:

56° 59.793' N 01° 52.224' W

As shown in Annex One.

2.3 Description of the Licensed Activity

The deposit of the substances, objects and articles listed in 2.4 and the removal of substances and objects following the UXO clearance operation.

As described in application dated 21 December, 2020 and correspondence submitted in support of the application.

2.4 Descriptions of the explosive substance or article

This licence authorises the deposit or use of the undernoted explosive substance or article required in connection with the licensed activity, subject to the amounts as specified below:

3 No. 500g Semtex
300g clearing charge

Objects to be deposited temporarily:

1 No. motor industry standard steel axle stand
1 No. concrete clump weight
1 No. pipe clamp
1 No. HYDRA
2 No. non-electric detonators
2 No. shot lines
1 No stud bar support rod

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Substances and objects to be removed:

All remaining substances and objects following the UXO clearance operation to achieve site clearance.

2.5 Contractor and Vessel Details

TBC

3. PART 3 – CONDITIONS

3.1 General Conditions

3.1.1 The Licensee must at all times deposit substances, objects and articles in accordance with the licence and the application and supporting information provided to the Licensing Authority.

3.1.2 The Licensee must ensure that only the substances, objects and articles listed in Part 2 of the licence are used during the execution of the Licensed Activity and that all substances, objects and articles used during the execution of the Licensed Activity 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 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.

3.1.4 The Licensee must ensure that prior to its engagement in the Licensed Activities, the name and function of any vessel, agent, contractor or subcontractor appointed to engage in the Licensed Activity and, where applicable, the master's name, vessel type, vessel International Maritime Organisation number and vessel owner or operating company are provided to the Licensing Authority.

3.1.5 The Licensee must ensure that the Licensing Authority is notified of any changes to the supplied details in condition 3.1.4 in writing, prior to any vessel, agent, contractor or sub-contractor which has not yet been notified to the Licensing Authority engaging in the Licensed Activities.

3.1.6 Only those vessels, agents, contractors or sub-contractors notified to the Licensing Authority are permitted to carry out any part of the Licensed Activities.

3.1.7 All masters of vessels or vehicle operators, agents, contractors and sub-contractors permitted to engage in the Licensed Activity must abide by the conditions of this licence.

3.1.8 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 Licensed Activity as required by this licence;
- b) the maintenance of the Licensed Activity or
- c) the drifting or wreck of the Licensed Activity,

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

3.1.9 The Licensee must, where any information upon which the granting of this licence was based has after the granting of this licence altered in any material respect, notify the Licensing Authority of this fact, in writing, as soon as reasonably practicable.

3.1.10 The Licensee must ensure that monitoring of the noise generated by the Licensed Activity is recorded in a manner suitable to provide for clear reports on underwater noise to be submitted to the Licensing Authority after the Completion of the Licensed Activity. Monitoring must be undertaken in line with the National Physical Laboratory guidance.

3.1.11 The Licensee must ensure that, to secure contingency for monitoring data collection, multiple recorders are used for the collection of noise data produced from the Licensed Activity.

3.1.12 The Licensee must ensure that the initial operation is as described in the application and supporting information. Only 500g of Semtex can be used for each attempt to disrupt or disintegrate the target unexploded ordnance.

3.2 Prior to the commencement of the Licensed Activity

3.2.1 The Licensee must complete and submit a proposed activity form in the online Marine Noise Registry for all Licensed Activities that will produce loud, low to medium frequency (10Hz-10kHz) impulsive noise as soon as possible prior to Commencement of the Licensed Activity. If any aspects of the Licensed Activity differs from the proposed activity form in the online Marine Noise Registry, the Licensee must complete and submit a new proposed activity form as soon as possible prior to Commencement of the Licensed Activity.

3.2.2 The Licensee must, prior to and no less than 24 hours before the Commencement of the Licensed Activity, notify the Licensing Authority, in writing, of the date of Commencement of the Licensed Activity authorised under the licence.

3.2.3 The Licensee must ensure that HM Coastguard, in this case zone3@hmcg.gov.uk, is made aware of the Licensed Activity prior to Commencement.

3.2.4 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 works.

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

3.2.6 The Licensee must ensure that copies of the licence 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) on board any vessels permitted to engage in the Licensed Activity.

3.2.7 The Licensee must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code where appropriate during all construction, operation and maintenance activities authorised under this licence.

3.2.8 The Licensee must ensure that a visual search of a 1.3km mitigation zone is undertaken by two dedicated Marine Mammal Observers ("MMO") for at least 1 hour prior to and up to the Commencement of the Licensed Activity. The MMOs should have suitable elevation to undertake the search. The visual search must be undertaken in line with the JNCC guidelines for minimising the risk of injury to marine mammals from using explosives ("JNCC 2010 Guidance").

3.2.9 The Licensee must ensure that the Licensed Activity does not commence until the MMOs are certain that no marine mammals have been detected within the 1.3km mitigation zone for at least 20 minutes.

3.2.10 The Licensee must ensure that during periods of darkness, poor visibility, or when the sea state is not conducive to visual mitigation, an acoustic search of the 1.3km mitigation zone is undertaken for at least 1 hour prior to and up to the Commencement of the Licensed Activity using Passive Acoustic Monitoring ("PAM") in line with the JNCC 2010 Guidance.

3.2.11 The Licensee must ensure that an Acoustic Deterrent Device ("ADD") is used for a continuous period of 15 minutes up to the Commencement of the Licensed Activity.

3.2.12 The Licensee must ensure that the ADD emits sound at frequencies between 10-20kHz and has a source level of greater than 190dB re 1 μ a (rms).

3.2.13 The Licensee must ensure the site of the Licensed Activity is clear of shipping and recreational vessels prior to the clearance of the unexploded ordnance in line with the application and supporting information.

3.2.14 The Licensee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system.

3.2.15 The Licensee must notify HM Coastguard ("HMCG") with as much notice as possible, in this case to zone3@hmcg.gov.uk and to include emergency vessel contact information for the vessel and the expected timescale of operation. The Licensing Authority must be sent a copy of this notification within five days of issue. Verbal communication should be made directly with HMCG at the start of the Licensed Activity, and again to notify the end of the clearance. This can be established either using the appropriate radio channels/frequencies or via telephone in this case to 01224 592 334.

3.3 During the Licensed Activity

3.3.1 The Licensee must ensure that any debris or waste materials arising during the course of the Licensed Activity are removed for disposal at an approved location above the tidal level of Mean High Water Springs.

3.3.2 The Licensee must ensure the best method of practice is used to minimise re-suspension of sediment during the Licensed Activity.

3.3.3 The Licensee must ensure appropriate steps are taken to minimise damage to the seabed by the Licensed Activity.

3.3.4 The Licensee must ensure the seabed is returned to the original profile, or as close as reasonably practicable, following the completion of the Licensed Activity.

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

3.4 Upon Completion of the Licensed Activity

3.4.1 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.

3.4.2 The Licensee must complete and submit a Close-out Report for all aspects of the Licensed Activities that produced loud, low to medium frequency (10Hz-10kHz) impulsive noise in the online Marine Noise Registry no later than 12 weeks from the Completion of the Licensed Activities.

3.4.3 The Licensee must submit a written report regarding the deposit of the licensed objects to the Licensing Authority. The written report must be submitted on the forms provided by the Licensing Authority no later than 31 July 2022. The report must confirm that all waste/debris from the UXO clearance has been removed, the method used to remove the debris, and the details of the amount and type of explosive substance or article utilised for the UXO clearance.

3.4.4 The Licensee must provide the Licensing Authority with the MMO records, no later than 28 days following Completion of the Licensed Activity.

3.4.5 The Licensee must ensure that all objects temporarily deposited are taken to a place above Mean High Water Springs prior to expiry of this licence.

3.4.6 The Licensee must undertake an 'As-Left' survey to confirm if the target has been completely disrupted, disintegrated and neutralised.

3.4.7 The Licensee must provide a report based on the noise monitoring to the Licensing Authority no later than 28 days following Completion of the Licensed Activity. This report must clearly detail the underwater noise levels generated by the Licensed Activity.

3.4.8 Following the Licensed Activity, the Licensee must carry out a search of 500m radius at the site, for at least 15 minutes. Such searches must focus on any affected or distressed marine mammal, fish or seabird.

3.4.9 The Licensee must recover any dead or injured fish resulting from the Licensed Activity, where safe to do so. The Licensee must examine such recovered fish and document any findings.

3.4.10 The Licensee must notify the Licensing Authority of any visibly affected or dead fish within 24 hours of sighting.

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.