

**MARINE SCOTLAND ACT 2010, PART 4 MARINE LICENSING**

**LICENCE TO CONSTRUCT, ALTER OR IMPROVE WORKS IN THE SCOTTISH MARINE AREA**

Licence Number: **MS-00009267**

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

**Near na Gaoithe Offshore Wind Limited  
Atria One, Level Six  
144 Morrison Street  
Edinburgh  
EH3 8EX**

to construct, alter or improve works 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 **11 May, 2021** until **30 September, 2022** and replaces licence MS-00008344.

Signed: .....

**Rebecca Bamlett**

For and on behalf of the Licensing Authority

Date of issue: 11 May, 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) "**the Application**" means the application and supporting information submitted on 10 September 2019;
- c) "**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;
- d) "**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;
- e) "**FLO**" means the Fisheries Liaison Officer;
- f) "**the Licensed Activity**" means any activity or activities listed in section 21 of the 2010 Act which is, or are authorised under the licence;
- g) "**Licensee**" means Neart na Gaoithe Offshore Wind Limited (Company Number SC356223), and having its registered office at Atria One, 144 Morrison Street, Edinburgh, EH6X;
- h) "**MARP**" means the Marine Archaeology Reporting Protocol (Written Scheme of Investigation and Protocol for Archaeological Discoveries) as required under condition 28 of the Section 36 consent (as varied) and condition 3.2.2.22 of the Offshore Transmission Infrastructure marine licence (as varied).
- i) "**Mean high water springs**" means any area submerged at mean high water spring tide;
- j) "**the Licensing Authority**" means the Scottish Ministers; and
- k) "**the Site**" means the area outlined in red and blue in Figure 1 contained in Part 4 of this licence.

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.MarineRenewables@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 Title of the Licensed Activity**

The title of the Licensed Activity to which this licence relates is "Seabed Preparation".

### **2.2 Location of the Licensed Activity**

Neart na Gaoithe Offshore Wind Farm, Firth of Forth,

55° 57.609' N 2° 23.820' W  
55° 57.693' N 2° 23.636' W  
55° 57.866' N 2° 22.729' W  
56° 00.688' N 2° 22.015' W  
56° 00.695' N 2° 23.522' W  
56° 02.852' N 2° 23.488' W  
56° 02.841' N 2° 21.468' W  
56° 14.460' N 2° 18.501' W  
56° 15.815' N 2° 20.192' W  
56° 20.312' N 2° 16.519' W  
56° 12.693' N 2° 16.287' W  
56° 17.473' N 2° 20.318' W  
56° 19.755' N 2° 17.836' W  
56° 20.171' N 2° 14.742' W  
56° 12.671' N 2° 09.131' W  
56° 15.291' N 2° 09.814' W  
56° 14.300' N 2° 18.250' W  
55° 57.734' N 2° 22.472' W  
55° 57.541' N 2° 23.539' W  
55° 57.584' N 2° 23.802' W

The Site area is presented in Figure 1.

Located within the Nearth na Gaoithe Offshore Wind Farm and Export Cable Corridor Area and an additional area adjacent to the Export Cable Corridor, east of Fife Ness in the outer Firth of Forth, within the areas described in Table 1 and bound by joining the following points above.

Table 1 – Seabed Preparation areas (as described in the Application)

Location	Number of sites/length
Wind turbine sites (300 x 300 m box)	54 wind turbine locations 6 spare wind turbine locations
Anchor zone (300 x 300 m box)	7
Inter-array cable routes	94 km in length, 60 m wide corridor
Interconnector cables	Approximately 3.5 km, 60 m wide corridor
OSP (400 x 400 m box)	2
Offshore export cable corridor including additional area on the western side of the corridor	One 200 m wide corridor or two 100 m corridors

## 2.3 Description of the Licensed Activity

Seabed Preparation works associated with the Neart na Gaoithe Offshore Wind Farm Project ("the Project") to enable safe construction of the Project. The works include:

- Relocation of boulders from the seabed in the vicinity of the wind turbine locations, offshore substation platform ("OSP") foundations, the inter-array and export cables areas;
- Placement of sand to infill spud can depressions in the vicinity of the wind turbine locations and OSP foundations;
- Placement of gravel, sand and/or cobbles on the seabed at the OSP locations to protect the spud cans of the jack-up barge to be used during construction;
- Placement of gravel, sand and/or cobbles to infill seabed depressions caused by unexploded ordnance clearance activities in the vicinity of the wind turbine locations and OSP foundations; and
- Removal of debris from the Site area during the pre-lay grapnel run.

As described in the Application and any subsequent correspondence submitted in support of the application.

## 2.4 Descriptions of the materials to be used during Licensed Activity

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

### Materials to be used in construction:

Sand 15,000m<sup>3</sup>; Gravel 30,500 m<sup>3</sup>; Cobbles 37,500 m<sup>3</sup>; and Boulders approximately 50,000.

### Materials to be removed during the pre-lay grapnel run:

Steel/iron: 2 tonnes; Timber: 1 tonne; Concrete: 1 tonne; and Plastic/synthetic: 1 tonne

### **3. PART 3 – CONDITIONS**

#### **3.1 General Conditions**

##### **3.1.1 Compliance with the Application**

The Licensee must at all times carry on the Licensed Activity in accordance with the Licence, the Application, and all information submitted in support of the application.

*Reason: To ensure compliance with the application for the marine licence and the information submitted in support of the application, in accordance with s.29(5) of the 2010 Act.*

##### **3.1.2 Licence conditions binding other parties**

All conditions attached to the licence bind any person who for the time being owns, occupies or enjoys any use of the Licensed Activity 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 the licence has been transferred to that person.

*Reason: To safeguard the obligations of the licence, in accordance with s.29(5) of the Marine (Scotland) Act 2010.*

##### **3.1.3 Vessels, vehicles agents, contractors and sub-contractors**

The Licensee must provide, as soon as reasonably practicable in advance of their engagement in the Licensed Activity authorised under this licence, the name and function of any vessel, vehicle, agent, contractor or sub-contractor appointed to engage in the Licensed Activity to the Licensing Authority. Where applicable the notification must include the vessel type, vessel IMO number and vessel owner or operating company.

The Licensee must ensure that any changes to the supplied details must be notified to the Licensing Authority, in writing as soon as reasonably practicable, prior to any vessel, vehicle, agent, contractor or sub-contractor engaging in the Licensed Activity.

The Licensee must ensure that only those vessels, vehicles, operators, agents, contractors or sub-contractors notified to the Licensing Authority are permitted to carry out any part of the Licensed Activity.

The name and address of any agents, contractors or sub-contractors appointed to carry out any part, or all, of the Licensed Activity must be notified to the Licensing Authority prior to their engagement in the Licensed Activity.

The Licensee must satisfy themselves that any masters of vessels or vehicle operators, agents, contractors or sub-contractors are 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. All masters of vessels or vehicle operators, agents, contractors and sub-contractors permitted to engage in the Licensed Activity must abide by the conditions set out in this licence.

The Licensee must give a copy of this licence, and any subsequent variations made to this licence in accordance with section 30 of the 2010 Act, to the masters of any vessels, vehicle operators, agents, contractors or sub-contractors permitted to engage in the Licensed Activity and must ensure that the licence and any such variations are read and understood by those persons.

*Reason: To ensure all parties involved in the Licensed Activity are aware of the licence and its conditions to reduce the risk of a breach of the licence, in accordance with s.39(1)(b) of the 2010 Act.*

#### **3.1.4 Force Majeure**

Should the Licensee or any of their agents, contractors or sub-contractors, by any reason of force majeure deposit anywhere in the marine environment any substance or object, 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 or vehicle operator determines that it is necessary to deposit the substance or object other than at the 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.

*Reason: To provide a defence for the Master to protect himself and his crew in bad weather conditions, in accordance with s.29(2)(b) of the 2010 Act.*

#### **3.1.5 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.

*Reason: To ensure that the Licensed Activity is carried out in accordance with the Application documentation, in accordance with s.29(2)(a) of the 2010 Act.*

#### **3.1.6 Submission of reports and notifications to the Licensing Authority**

The Licensee must submit all reports and notifications to the Licensing Authority, in writing, as are required under this licence within the time periods specified in this licence. Where it would appear to the Licensee that there may be a delay in the submission of the reports or notifications 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 or notifications ought to have been submitted to the Licensing Authority under the terms of this licence.

The reports must include executive summaries, assessments and conclusions and any data will, subject to any rules permitting non-disclosure, be made publically available by the Licensing Authority or by any such party appointed at

their discretion.

Reports prepared pursuant to another consent or licence relating to the Licensed Activity by the Licensee or by a third party may also be used to satisfy the requirements of this licence.

Reason: To ensure that all reports and notifications are submitted within a reasonable timescale after the licence is granted, in accordance with s.29(3)(c) of the 2010 Act.

### **3.1.7 Environmental protection**

The Licensee must ensure that all reasonable, appropriate and practicable steps are taken at all times to avoid or minimise any damage to the Scottish marine area caused as a result of the undertaking of the licensed activities.

The Licensee must ensure that all personnel adhere to the Scottish Marine Wildlife Watching Code where appropriate while carrying on the Licensed Activity authorised under this licence.

The Licensee must ensure that any debris or waste material placed below MHWS during the construction of the Licensed Activity are removed from the Site, as soon as is reasonably practicable, for disposal at a location above the MHWS.

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

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

The Licensee must ensure that all substances and objects deposited 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.

The Licensee must ensure that the risk of transferring marine non-native species to and from the Site is kept to a minimum by ensuring appropriate bio-fouling management practices are implemented during the Licensed Activity.

Reason: To ensure environmental impacts are minimised, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.8 Availability of the licence for inspection**

The Licensee must ensure that copies of this licence and any subsequent amendments or variations are available for inspection at any reasonable time by any 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) any onshore premises directly associated with the Licensed Activity; and

d) aboard any vessels permitted to engage in the Licensed Activity.

Reason: To ensure the licence is available for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.9 Inspection of the Licensed Activity**

Any persons authorised by the Licensing Authority, must be permitted to inspect the Licensed Activity at any reasonable time. The Licensee must, as far as reasonably practicable, on being given reasonable notice by the Licensing Authority (of at least 72 hours), provide transportation to and from the Site for any persons authorised by the Licensing Authority to inspect the Site/Licensed Activity.

Reason: To ensure access to the Site for the purpose of inspection, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.10 Emergencies**

If the assistance of a Government Department (to include departments of Administrations other than the Scottish Government) is required 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.

Reason: To ensure licensee is aware of financial liabilities, in accordance with s.29(2)(b) of the 2010 Act.

### **3.1.11 Previous marine licence**

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 Neart na Gaoithe Offshore Wind Limited, dated 10 December 2020 (licence number MS-00008344) is not permitted.

Reason: To ensure that the Licensed Activity is carried out in accordance with the Application documentation, in accordance with s.29(2)(a) of the 2010 Act.

## **3.2 Conditions specific to the Licensed Activity**

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

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.

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

The Licensee must ensure that details of the Licensed Activity are promulgated in the Kingfisher Fortnightly Bulletin, prior to the Commencement of the Licensed Activity, to inform the Sea Fish Industry of the vessel routes, the timings and the location of the Licensed Activity and of the relevant operations.

The Licensee must ensure that any vessels permitted to engage in the Licensed Activity are marked in accordance with the International Rules for the Prevention of Collisions at Sea whilst under way, and in accordance with the UK Standard Marking Schedule for Offshore Installations if the vessel is secured to the seabed.

The Licensee must ensure that no radio beacon or radar beacon operating in the marine frequency bands is installed or used on the Licensed Activity without the prior written approval of the Office of Communications.

The Licensee must ensure that navigable depth is not altered by more than 5% referenced to Chart Datum unless otherwise agreed, in writing, with the Licensing Authority in consultation with the MCA and NLB.

Reason: To reduce the navigational risk to other legitimate users of the sea, in accordance with s.29(2)(b) of the 2010 Act.

### **3.2.2 Incident Reporting**

In the event of any breach of health and safety or environmental obligations relating to the Licensed Activity during the period of this licence, the Licensee must provide written notification of the nature and timing of the incident to the Licensing Authority, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of the incident occurring.

Reason: To keep the Scottish Ministers informed of any such incidents which may be in the public interest, in accordance with s.29(3)(c) of the 2010 Act.

### **3.2.3 Bunding and storage facilities**

The Licensee must ensure suitable bunding and storage facilities are employed to prevent the release of fuel oils and lubricating fluids associated with the plant and equipment into the marine environment.

Reason: To ensure pollution prevention is undertaken, in accordance with s.29(2)(b) of the 2010 Act.

### **3.2.4 Markings, lighting and signals of the Licensed Activity and jack up vessels**

The Licensee must ensure that the Licensed Activity are marked and lit in accordance with the requirement of the MCA and NLB and in accordance with the UK Standard Marking Schedule for Offshore Installations.

Reason: To ensure safe appropriate marking and lighting of the offshore Licensed Activity, in accordance with s.29(2)(b) of the 2010 Act.

### 3.2.5 Restriction to the timings of the Licensed Activity

The Licensee must ensure that the Licensed Activity located within 2 km of Thorntonloch bathing waters do not take place within the bathing water season from 1 June to 15 September if a plough or mechanical jetting tool is utilised during the Licensed Activity.

Reason: To ensure environmental and human health impacts are minimised, in accordance with s.29(2)(b) of the 2010 Act.

### 3.2.6 Fisheries Liaison Officer

The Licensee must appoint a Fisheries Liaison Officer ("FLO"), to maintain effective communication between any contractors or sub-contractors, fishermen and other users of the sea during the Licensed Activity and which will ensure compliance with best practice guidelines when doing so.

The Licensee must ensure that the relocation of boulders is reported as soon as reasonably practicable to fishermen.

Reason: To facilitate engagement with the commercial fishing industry and minimise interference with fishing operations and other users of the sea in accordance with s.29(3)(c) of the 2010 Act.

### 3.2.7 Marine Archaeological Reporting Protocol

The Licensee must ensure the Licensed Activity will not occur within Archaeological Exclusion Zones as identified in the Marine Archaeological Reporting Protocol ("MARP") and any unexpected archaeological features discovered during the Licensed Activity are addressed following the protocol for archaeological discoveries. The MARP must be adhered to at all times during the Licensed Activity for all areas of the Licensed Activity.

Reason: To ensure any discovery of archaeological interest is properly and correctly reported in accordance with s.29(3)(a) of the 2010 Act.

## 3.3 Conditions upon Completion of the Licensed Activity

### 3.3.1 Reporting

The Licensee must submit a written report regarding the correct amount of construction materials used during the Licensed Activity to the Licensing Authority. The written report must be submitted no later than 28 days after the Completion of the Licensed Activity and must include the location of the deposited materials.

Reason: To inform the Licensing Authority of the Completion of the Licensed Activity in accordance with s.29(3) of the 2010 Act.

**3.3.2 Date of Completion of the Licensed Activity**

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 Completion of the Licensed Activity.

*Reason: To inform the Licensing Authority of the Completion of the Licensed Activity in accordance with s.29(3) of the 2010 Act.*

**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.