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MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

LICENCE TO CONSTRUCT WORKS AND TO DEPOSIT PONTOONS WITHIN THE SCOTTISH MARINE AREA

Licence Number: 06790/19/0

Reference Number: 06790

The Scottish Ministers hereby authorise:

**Kilfinichen Farms LLP
Kilfinichen Estate
Tiroran
Isle of Mull
PA69 6ER**

to construct works and to deposit pontoons within the Scottish marine area as described in Part 2 of the attached Schedule.

This licence is subject to the conditions set out in Part 3 of the said Schedule and is valid from **14 January 2019** until **30 June 2020**.

Signed: _____
[Redacted]

For and on behalf of the licensing authority

Date: 14 January 2019

1. PART 1 – GENERAL

1.1. Interpretation

In this licence, unless otherwise stated, terms are as defined in sections 1, 64 and 157 of the Marine (Scotland) Act 2010:

- a) “the 2010 Act” means the Marine (Scotland) Act 2010
- b) “licensable marine activity” means any activity listed in section 21 of the 2010 Act
- c) “licensee” means the recipient of the licence
- d) “the licensing authority” means the Scottish Ministers
- e) “mean high water springs” means the average of high water heights occurring at the time of spring tides
- f) “seabed” means the ground under the sea

All geographical co-ordinates contained within this licence are in latitude and longitude format WGS84.

1.2. Contacts

All correspondence or communications relating to this licence should be addressed to:

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

Tel: +44 (0) 300 244 5046

Email: ms.marinelicensing@gov.scot

1.3. Other authorisations and consents

The licensee is deemed to have satisfied themselves that there are no barriers or restrictions, legal or otherwise, to the carrying out of the licensed operations. The issuing of this 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 of the 2010 Act the licensing authority may by notice vary, suspend or revoke this licence granted by them if it appears to the licensing authority that there has been a breach of any of the provisions of this licence or for any such other reason that appears to be relevant to the authority under section 30(2) or (3) of the 2010 Act.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, vary this licence if satisfied that the variation being applied for is not material.

Under section 30 of the 2010 Act the licensing authority may on an application made by the licensee, transfer this 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 provide full details of the matter to 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, either 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 by 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 the sheriff of any sheriffdom against a decision taken by the Scottish Ministers under section 29(1) of the 2010 Act.

2. PART 2 - PARTICULARS**2.1. Name(s) and address(es) of any other agents, contractors or sub-contractors acting on behalf of licensee:**

Affric Limited
 Lochview Office
 Loch Duntelchaig
 Farr
 IV2 6AW

See condition 3.1.2.

2.2. Location of the works:

Kilfinichen Pier Development, Isle of Mull within the area bounded by joining the following points:

56° 22.834' N	006° 03.217' W
56° 22.832' N	006° 03.213' W
56° 22.829' N	006° 03.214' W
56° 22.801' N	006° 03.159' W
56° 22.799' N	006° 03.192' W
56° 22.797' N	006° 03.192' W
56° 22.799' N	006° 03.158' W
56° 22.794' N	006° 03.149' W
56° 22.784' N	006° 03.164' W
56° 22.783' N	006° 03.161' W
56° 22.793' N	006° 03.146' W
56° 22.790' N	006° 03.140' W
56° 22.780' N	006° 03.163' W
56° 22.774' N	006° 03.168' W
56° 22.770' N	006° 03.166' W
56° 22.765' N	006° 03.160' W
56° 22.764' N	006° 03.152' W
56° 22.765' N	006° 03.142' W
56° 22.783' N	006° 03.094' W
56° 22.776' N	006° 03.079' W
56° 22.773' N	006° 03.083' W
56° 22.768' N	006° 03.072' W
56° 22.778' N	006° 03.057' W
56° 22.783' N	006° 03.068' W
56° 22.780' N	006° 03.073' W
56° 22.787' N	006° 03.088' W
56° 22.793' N	006° 03.085' W
56° 22.799' N	006° 03.089' W
56° 22.836' N	006° 03.182' W
56° 22.839' N	006° 03.194' W
56° 22.840' N	006° 03.198' W

56°	22.837' N	006°	03.207' W
56°	22.835' N	006°	03.216' W

As per the plan detailed in Appendix 1.

2.3. Description of the works:

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

- Construction of 140m long rock armoured causeway with a 60m long L-shaped hammerhead;
- Installation of an access bridge and floating pontoon; and
- Relocation of an existing pontoon.

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

2.4. Nature and quantity of materials and deposits*:

Materials used in construction

Concrete (incl. bankseat, pontoon base and jacking points), 144 tonnes
Steel (incl. jacking points and furnishings), 15 tonnes
Boulders $\geq 256.0\text{mm}$ (rock armour), 22,500 tonnes
Cobbles and boulders (rock fill) ≥ 64.0 , 65,000 tonnes
Geotextile (synthetic geotextile fabric), $1,700\text{m}^2$

Permanent deposits

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.

**Indicative only*

3. PART 3 – CONDITIONS

3.1. General conditions

3.1.1. Licence conditions binding other parties

All conditions attached to this licence bind any person who for the time being owns, occupies or enjoys any use of the works 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. Agents, contractors and sub-contractors

The licensee must provide, as soon as is reasonably practicable prior to the licensed activities commencing, the name and function of any agent, contractor or sub-contractor appointed to undertake the licensed activities.

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.

The licensee must ensure that only those agents, contractors or sub-contractors notified to the licensing authority are permitted to undertake the licensed activities.

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 activities. The licensee must satisfy themselves that any such agent, contractor or sub-contractor is aware of the extent of the works for which this licence has been granted, the activity which is licensed and the terms of the conditions attached to this licence.

3.1.3. Vessels

The licensee must submit full details of the vessels to be utilised in respect of the works, 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 works. The vessel details provided must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

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.

3.1.4. Force Majeure

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.

3.1.5. 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.

3.1.6. Submission of reports to the licensing authority

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 authority under the terms of this licence.

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 publically available by the licensing authority, or by any such party appointed, at their discretion.

3.1.7. Environmental protection

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.

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.

The licensee must ensure that any debris or waste materials placed below MHWS during the construction of the works 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").

The licensee must ensure that all substances and materials used during the execution of the works 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 SEPA's [biosecurity and non-native species guidance](#) is followed during the works to reduce the risk of transferring non-native species to and from the site.

3.1.8. Safety of Navigation

The licensee must ensure that all works are carried out in accordance with the Navigational Risk Assessment, dated 16th August 2018, submitted in support of the application.

3.1.9. Availability of the licence for inspection

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 activities.

3.1.10. Inspection of the works

Any persons authorised by the licensing authority, must be permitted to inspect the works 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.

3.2. Prior to commencement of the works

- 3.2.1.** The licensee must, no later than 7 days prior to commencement of the works, notify the licensing authority of the proposed start date of the works.
- 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 works prior to commencement.

3.3. During the works

- 3.3.1.** The licensee must ensure that only the deposits listed in Part 2 of this licence are deposited during the execution of the works and that all substances or objects deposited during the execution of the works 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 works 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 works are kept informed with regards to the progress of the works 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 are maintained at all times in good repair.
- 3.3.6.** In the event of the works being discontinued prior to their completion, the licensee must remove the works 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 works as required by licence;
 - b) The maintenance of the works; or
 - c) The drifting or wreck of the works.

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 works before the expiry of this licence.

3.4. On completion of the works

- 3.4.1.** The licensee must, within 7 days of completion of the works, notify the licensing authority of the date of completion of the works.
- 3.4.2.** The licensee must, within 28 days of completion of the works 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 works, 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.

Appendix 1 – Kilfinichen Pier Development Location

