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MARINE (SCOTLAND) ACT 2010, PART 4 MARINE LICENSING

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

Licence Number: 06406/19/1

Reference Number: 06406

The Scottish Ministers hereby authorise:

Marine Harvest (Scotland) Limited
1st Floor Admiralty Park
Admiralty Road
Rosyth
Fife
KY11 2YW

to construct, alter or improve works within the Scottish marine area, in or over the sea, or on or under the seabed 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 **28 November 2019** until **31 March 2020**.

Signed: [Redacted]

Anni Mäkelä

For and on behalf of the licensing authority

Date: 28 November 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 the licensee:

Agents

Wallace Stone LLP, Studio 2/3 Templeton Business Centre 62, Templeton Street,
Glasgow, G40 1DA

Contractors

RJ McLeod Ltd - Strathpeffer Road, Dingwall, IV15 9XB

Sub-contractors

SPI Piling Ltd – Lostock Industrial Estate, Bolton Lancashire, BL6 4SB

Foyle & Marine Dredging Ltd – Glencrow Business Park, Glencrow, Merville, Co.
Denegal, F93 DF84, Ireland

2.2. Location of construction works:

West Reclamation Area, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.425' N	005° 45.209' W
57° 16.419' N	005° 45.209' W
57° 16.406' N	005° 45.216' W
57° 16.368' N	005° 45.318' W

East Reclamation Area, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.389' N	005° 45.125' W
57° 16.402' N	005° 45.062' W
57° 16.404' N	005° 45.063' W
57° 16.416' N	005° 45.121' W

Slipway, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.381' N	005° 45.142' W
57° 16.389' N	005° 45.125' W
57° 16.416' N	005° 45.121' W

57° 16.416' N 005° 45.142' W

West Rock Armour, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.374' N 005° 45.343' W
57° 16.442' N 005° 45.209' W
57° 16.425' N 005° 45.209' W
57° 16.368' N 005° 45.318' W
57° 16.366' N 005° 45.338' W

East Rock Armour, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.389' N 005° 45.125' W
57° 16.402' N 005° 45.062' W
57° 16.404' N 005° 45.063' W
57° 16.416' N 005° 45.121' W

Pier Extension Area, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.419' N 005° 45.209' W
57° 16.483' N 005° 45.209' W
57° 16.483' N 005° 45.272' W
57° 16.494' N 005° 45.272' W
57° 16.493' N 005° 45.189' W
57° 16.407' N 005° 45.189' W

East Quay Wall and Pier Piles, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.407' N 005° 45.141' W
57° 16.407' N 005° 45.189' W
57° 16.493' N 005° 45.189' W
57° 16.493' N 005° 45.209' W
57° 16.460' N 005° 45.209' W

Pier Sheet Piles, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.460' N 005° 45.209' W
57° 16.422' N 005° 45.209' W

Slipway Sheet Piles, Kyleakin, Isle of Skye, within the area bounded by joining the following points:

57° 16.381' N	005° 45.142' W
57° 16.407' N	005° 45.141' W
57° 16.416' N	005° 45.142' W
57° 16.416' N	005° 45.121' W
57° 16.396' N	005° 45.121' W

Long Sea Outfall, Kyleakin, Isle of Skye, within a line formed by joining the following points:

57° 16.352' N	005° 45.418' W
57° 16.390' N	005° 45.419' W
57° 16.451' N	005° 45.420' W
57° 16.503' N	005° 45.421' W
57° 16.549' N	005° 45.421' W

2.3. Description of the works:

Construction works for the Fish Feed Plan in Kyleakin, including the following activities:

- Land reclamation;
- Extension of pier and construction of quay;
- Construction of a long sea outfall; and
- Construction of a pier for landing of dredge material

As described in the application and the Environmental Statement ("ES") dated 30 May 2017 and all other associated information and correspondence.

2.4. Nature and indicative quantity of materials:

Steel/Iron (incl. piles and anchor plates), 3365 tonne
 Concrete (incl. caissons and grout), 3768 tonne
 Sand (incl. caisson fill and marine reclamation), 52500 tonne
 Gravel (incl. caisson fill and marine reclamation), 73500 tonne
 Cobbles (incl. scour protection and caissons), 8550 tonne
 Boulders (incl. rock armour), 30500 tonne
 Plastic outlet pipe at slipway for culvert, 20m length x 2.1m diameter
 Proprietary precast concrete scour mats, 630 tonne
 Rubber (incl. pier and slipway fenders), 117 tonne
 Precast concrete units, 480 tonnes
 Zinc alloy anodes (incl. cathodic protection), 48 tonnes
 Long sea outfall pipe, HPPE, 018m diameter.

Less any materials already used under authority of Licences Number 06406/17/0 or 06406/19/0.

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

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 notify the licensing authority, in writing, of any vessel being used to carry on any licensed activity under this licence on behalf of the licensee. Such notification must be received by the licensing authority no less than 72 hours before the commencement of the works. The notification 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.

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 deposit at a location above MHWS approved by the Scottish Environment Protection Agency.

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 that the risk of transferring non-native species to and from the site is kept to a minimum by ensuring appropriate bio-fouling management practices are implemented during the works.

3.1.8. Availability of the licence for inspection

Marine Laboratory, 375 Victoria Road, Aberdeen, AB11 9DB
<http://www.gov.scot/Topics/marine/Licensing/marine>



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, contractor or sub-contractor acting on behalf of the licensee; and
- c) any onshore premises directly associated with the licensed activities.

3.1.9. 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 the licensed works commencing

- 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 adhere to the agreed Marine Monitoring Plan (Revision 02, 22 August 2017) for monitoring any effects of the project on the flame shell bed feature of the Lochs Duich, Long and Alsh NC MPA. It is not permissible to change the Marine Monitoring Plan without the written approval of the licensing authority. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion.
- 3.2.3.** The licensee must ensure that a Notice to Mariners is issued prior to commencement of the works, clearly stating the nature and duration of the works. This notice must also be sent to local recreation users.
- 3.2.4.** The licensee must ensure that, if any aspects of the licensed activities differ from the detail submitted in the online Marine Noise Registry, a new Proposed Activity Form is completed and submitted no later than seven days prior to commencement of the licensed activity.
- 3.2.5.** Prior to commencement of the works, the licensee must appoint an Environmental Clerk of Works ("ECoW") who must be on site during the licensed works, as determined by the Environmental Statement, and shall have authority to halt the works if necessary.
- 3.2.6.** 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.

- 3.2.7.** The licensee must develop a Communications Management Plan, prior to works commencing, containing communication protocols to maintain regular contact with the BUTEC range controller and coordinate marine traffic movements to and from the works with the operation of the MOD BUTEC ranges to ensure range operations are not impeded or degraded during the works and thereafter for as long as marine traffic use the completed works.
- 3.2.8.** The licensee must develop an enforceable Noise Impact Mitigation Strategy, prior to works commencing, for the approval of Marine Scotland (in conjunction with the MOD) to define the measures that will be put in place for the duration of the construction of the development to ensure pile driving and dredging type works are coordinated with the operation of the MOD BUTEC ranges. This must include:
- a) Provision for the licensee to notify the MOD BUTEC ranges operator of the commencement of the works.
 - b) Provision(s) whereby the licensee will cease piling and dredging type works for specified periods as necessary for the purposes of conducting trial type works at the MOD BUTEC ranges.

3.3. During the works

- 3.3.1.** The licensee must ensure that the works take place in accordance with the approved indicative plan (Annex 1).
- 3.3.2.** The licensee must ensure that the works are carried out in accordance with the approved CEMD of 28 September 2017, or any updated CEMD in agreement with the licensing authority.
- 3.3.3.** The licensee must ensure that, during the execution of the works, the risk of marine pollution is minimised by implementing the approved pollution control plan (Revision 1, 28 September 2017), or any updated pollution control plan in agreement with the licensing authority.
- 3.3.4.** The licensee must ensure that, during the execution of the works, the risk of transferring marine non-native species to and from the location of the works is minimised by implementing the approved marine invasive non-native species and biosecurity management plan (Revision 1, 26 September 2017), or any updated marine invasive non-native species and biosecurity management plan in agreement with the licensing authority.
- 3.3.5.** The Licensee must ensure that no anchoring of vessels associated with the licensable marine activities occurs within the flame shell bed feature of the Lochs Duich, Long and Alsh MPA. This includes the temporary pontoons/ platforms/ caisson. Any anchoring is to take place within the dredge area only during construction and only for emergencies.

- 3.3.6.** The licensee must ensure that the works are marked and lighted as required by the Northern Lighthouse Board and the marking and lighting is continued unless and until the licensing authority rescind this direction.
- 3.3.7.** When the caissons being used for the pier construction are in the temporary mooring area they will be required to display a Quick Red (QR) light at the most Northwesterly corner. The light should be mounted a minimum of 2 metres above the caisson deck level, and have a nominal range of at least 1 nautical mile.
- 3.3.8.** The most Northwesterly and Northeasterly corners of the new pier shall each be marked with 2 fixed Red lights of 2 nautical mile range. The lights should be installed vertically with a minimum 1 metre separation and with the lower light a minimum of 2 metres above pier level.
- 3.3.9.** The licensee should apply for "Statutory Sanction Application of New or Alter light or Mark" from the Northern Lighthouse Board for the new pier lights to ensure their records are updated as necessary; forms are available on request from navigation@nlb.org.uk or <http://www.nlb.org.uk/ourlights/Statutory.htm>.
- 3.3.10.** The long sea outfall must be located as per Part 2, Section 2.2 of this licence.
- 3.3.11.** 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.
- 3.3.12.** The licensee must ensure that the works are maintained at all times in good repair.
- 3.3.13.** The licensee must ensure that any debris or waste materials arising during the course of the works are removed from below Mean High Water Springs.
- 3.3.14.** 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.
- 3.3.15.** The licensee must remove all temporary structures constructed as part of the works before the expiry date of this licence.
- 3.3.16.** The licensee must, no later than 12 weeks after completion of the licensed activities, complete and submit a Close-out Report in the online Marine Noise Registry.
- 3.3.17.** 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.

- 3.3.18.** The licensee must ensure that the methodology detailed in the ES for laying the long sea outfall pipe is followed.
- 3.3.19.** The licensee must use vibro-piling rather than impact piling as much as possible.
- 3.3.20.** Piling works are not permitted between the hours of 8pm and 7.30am.
- 3.3.21.** The licensee must ensure that all Marine Mammal Observers (MMO) utilised in respect of the piling works are trained, dedicated and experienced MMO as defined in the 2010 JNCC piling protocol.
- 3.3.22.** The licensee must ensure that during hours of darkness or when visual observation is not possible due to weather conditions or sea state, a specialist sub-contractor fulfilling the role of the Passive Acoustic Monitoring (PAM) operative is utilised in accordance with the 2010 JNCC piling protocol.
- 3.3.23.** The licensee must ensure that prior to the commencement of piling works, the MMO or PAM operative carry out a pre-piling search as per the JNCC piling protocol for a minimum period of 20 minutes.
- 3.3.24.** The licensee must ensure that a mitigation zone with a radius of 500 metres is employed by the MMO or PAM operative in accordance with the JNCC piling protocol.
- 3.3.25.** The licensee must ensure that prior to commencement of piling works soft start substitute equipment is employed for a minimum period of 20 minutes.
- 3.3.26.** The licensee must ensure that soft-start substitute equipment is employed to provide continuity of piling noise throughout any break in piling works which lasts more than ten minutes but less than one hour. The soft-start substitute equipment must be switched off when piling works recommence.
- 3.3.27.** The licensee must ensure that, where gaps in piling works are expected to last more than one hour, the pre-piling search and soft start procedure (using soft start substitute equipment) is repeated prior to piling works recommencing as detailed in the JNCC piling protocol.
- 3.3.28.** Noisy activities must occur before the summer in order to minimise disturbance to marine mammals.
- 3.3.29.** The licensee must consider conducting dredging and piling at the same time to reduce the overall disturbance duration.

3.3.30. The licensee must conduct monitoring of the acoustic output from the piling works.

3.4. On completion of the works

- 3.4.1.** Should the licensee wish to amend the location of the long sea outfall, a separate marine licence application must be made to the licensing authority.
- 3.4.2.** The licensee must, within 7 days of completion of the works, notify the licensing authority of the date of completion of the works.
- 3.4.3.** 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.
- 3.4.4.** 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.