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MS EPS 28 2019 0

Date: 01 July 2020

## THE CONSERVATION (NATURAL HABITATS, &c.) REGULATIONS 1994

### LICENCE TO DISTURB MARINE SPECIES

This licence is granted under regulation 44 (2) (e) of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) by the Scottish Ministers who, after consultation with, and having been advised as to the circumstances in which they should grant such licences by Scottish Natural Heritage are satisfied as regards the purpose for which the licence is granted, (namely, an imperative reason of public health and safety or overriding public interest including that of a social or economic nature and beneficial consequences of primary importance for the environment); and that (a) there is no other satisfactory alternative and (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range; and unless revoked by the Scottish Ministers is valid from 01 July 2020 until 31 December 2021 and authorises:

Aberdeen Harbour Board  
16 Regent Quay  
Aberdeen  
AB11 5SS

Or any person authorised in writing by Aberdeen Harbour Board, to disturb the European protected species of Harbour Porpoise (*Phocoena phocoena*), Bottlenose dolphin (*Tursiops truncatus*), White-beaked dolphin (*Lagenorhynchus albirostris*), Risso's dolphin (*Grampus griseus*) and Minke whale (*Balaenoptera acutorostrata*) at Nigg Bay, as detailed in the application for a licence to disturb European protected species and supporting documents but only subject to the under-noted conditions:

### PURPOSE AND CIRCUMSTANCES IN WHICH ACTION IS REQUIRED

This licence is granted for the purpose of permitting the disturbance harbour porpoise (*Phocoena phocoena*), bottlenose dolphin (*Tursiops truncatus*), white-beaked dolphin (*Lagenorhynchus albirostris*), Risso's dolphin (*Grampus griseus*) and minke whale (*Balaenoptera acutorostrata*) at Nigg Bay, for imperative reasons of overriding public interest including that of a social or economic nature and beneficial consequences of primary importance for the environment in connection with activities associated with Aberdeen Harbour Expansion Project at the following approximate locations:

57° 08.277' N 002° 02.840' W  
57° 07.991' N 002° 02.473' W  
57° 07.928' N 002° 02.374' W  
57° 07.707' N 002° 02.900' W

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Sea deposit site:

Within a 0.25 nautical mile radius of 57° 07.000' N 002° 00.000' W.

This licence is granted for permitting disturbance of the above named species as a result of the activities associated with Aberdeen Harbour expansion Project, including:

- Dredging and sea deposit of dredge material
- Drilling
- Deposit and use of any explosive substances or articles
- Drum cutting

## Licence Conditions

1. The licensee must ensure that all works are carried out in strict accordance with the mitigation and working methods proposed in the application for this licence to disturb European protected species, together with supporting information including the Supplementary Information for the Application for a European Protected Species Licence (2019 to 2020) document dated 27 November 2019 and all works must be carried out within the timescale given within the application and any subsequent written correspondence between Marine Scotland and the applicant, but subject to the following modifications or amendments made within this licence.
2. The licensee must ensure that all mitigation detailed in the Construction Environmental Management Document (“CEMD”) dated October 2019 is adhered to at all times. In the event that the licensee wishes to update or amend any of the protocols in the CEMD, the licensee must submit, in writing, details of proposed updates or amendments to the licensing authority for their written approval, no later than one month or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed updates or amendments. It is not permissible for any works associated with the proposed updates or amendments to proceed prior to the granting of such approvals.
3. The licensee must submit an Adaptive Blasting Management Plan (“ABMP”) to the licensing authority for its written approval at least two months prior to deposit and use of any explosives, or less if agreed by the licensing authority. The ABMP must be consistent with the marine licence application and supporting documents and must contain, but not be limited to, the following:
  - a) Limitation of the incremental charge weight increase to 5kg at all times.
  - b) A programme of incremental charge weight increase, including details of number of blasts per charge weight and the process for when underwater noise levels approach or exceed the agreed noise thresholds.

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- c) A reporting strategy, including timelines to inform the licensing authority of any blasting events and subsequent underwater noise monitoring results, including both raw and calibrated peak and Sound Exposure Level (“SEL”) metrics, and number of detonations used.
- d) A Precautionary Control Limit (“PCL”) and noise threshold using peak noise metric.
- e) A plan for recording and calculating the SEL metric to inform both PCL and threshold based on latest available guidance. The maximum duration of each blast should be used for these calculations.
- f) Details of the underwater noise monitoring techniques, protocols and equipment to be used and their proposed locations in Nigg Bay.
- g) Details of the proposed use of Marine Mammal Observers (“MMO”), Passive Acoustic Monitoring and fish scarers.
- h) Details of all monitoring, recording and reporting of the use of Nigg Bay by marine mammals.

All works must proceed in accordance with the approved ABMP. Any updates or amendments made to the ABMP must be submitted, in writing, to the licensing authority for its written approval no later than two months or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed amendments. It is not permissible for any use of explosives to commence prior to approval of the ABMP. In granting such approval, the licensing authority may consult any such other advisors, organisations or stakeholders as may be required at their discretion.

- 4. In the event of the licensee becoming aware that any of the information on which the issue of this licence was based has changed, the licensing authority must be notified as soon as reasonably practicable.
- 5. The licensee must ensure that, if any aspects of the proposed activities differ from the detail submitted in the Noise Registry - Initial Registration Form, a new Initial Registration Form shall be completed and submitted to the licensing authority and the Joint Nature Conservation Committee (“JNCC”) no later than one week prior to commencement of the licensed activity.
- 6. Except where it is not relevant to the provisions of this licence, the licensee must ensure that the Scottish Marine Wildlife Watching Code is adhered to at all times.

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7. The licensee must ensure that copies of the licence are available for inspection by any person authorised by the Scottish Ministers at the office of the licensee and at all sites where licensed activities are taking place.
8. Any person authorised by the Scottish Ministers must be permitted to inspect the operations relating to the licence at any reasonable time. The licensee must allow appropriate assistance to facilitate inspection.
9. The licensee must, no later than one month after the expiry date of this licence, submit to Marine Scotland, Planning and Policy, Licensing Operations Team, a written report detailing all actions taken in accordance with the specified terms and conditions of the licence. This report must detail the procedures, visual observations and include the original Marine Mammal Recording Form(s). Any difficulties encountered, or recommendations should also be noted.
10. The licence holder must, no later than 12 weeks after completion of the noisy activity, complete a 'close-out' noise registry form. This is available from the JNCC website <https://mnr.jncc.gov.uk/>

Authorised on behalf of Scottish Ministers  
By a member of staff of the Scottish Government

Anni Mäkelä  
Marine Scotland  
Marine Planning and Policy  
Licensing Operations Team  
375 Victoria Road  
Aberdeen  
AB11 9DB  
01 July 2020