



Department of
**Agriculture, Environment
and Rural Affairs**

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**Department of Agriculture, Environment & Rural Affairs
Marine & Fisheries Division**

**LICENCE ISSUED UNDER THE MARINE AND COASTAL ACCESS ACT 2009, PART 4, MARINE
LICENSING**

MARINE CONSTRUCTION LICENCE

Licence to carry out remedial repair works to sea defences in Blue Circle Island Larne Lough

Licence Number: ML 10_17 Variation 2

Part 1 - Particulars

1. Licensee(s) Name & Address:

Royal Society for the Protection of Birds
The Lodge
Sandy
Bedfordshire
SG19 2DL

L&M Keating
Building and Civil Engineering
Kilmihil, Co. Clare, V15 HC84

2. Names, and operators, of the vessels to be employed to undertake or support the deposit, relocation or removal operations:

R A O'Neill Plant Hire Ltd
91 Tullyhaghans Road, Dunloy, Ballymena BT44 9EB

3. Description of works and nature and quantity of all deposits below Mean High Water Springs:

Repair works to existing sea defences at Blue Circle Island, Larne Lough. Works will include restoration to the existing sea defences through the provision of well graded core material and secondary and primary layers of rock armour stone. Washed out areas will also be similar to adjacent using crushed rock surfaced with gravel. The surface of the island is to be covered in weed barrier and approximately 150 mm of clean stone. Couch grass in the washed out areas will be overlaid with a geotextile and covered with shingle/pebbles, which will protect the island birds.

4. Location of works:

The works will take place on Blue Circle Island, Larne Lough
The approximate centre location of the island is 54.823005, -5.771895

5. Valid:

From: 29th February 2020
Until: 31st March 2020

Works to be concluded by 31st March 2020.

Should works be required to continue after this period due to inclement weather conditions, and following agreement with the licensing authority they maybe undertaken during the period.

From: 1st September 2020
Until: 30th November 2020

Works to be concluded by 30th November 2020

PART 2: CONDITIONS

The Department of Agriculture, Environment & Rural Affairs (referred to as the licensing authority) authorises RSPB, L&M Keating and R A O'Neill Plant Hire Ltd to deposit in the sea the substances or articles (except for dredge material) used in the execution of works described in Part 1 of this licence. This licence is subject to the under mentioned condition(s):

Licence Condition(s):

NOTE: FAILURE TO COMPLY WITH THE LICENCE CONDITIONS BELOW MAY RESULT IN ENFORCEMENT ACTION BEING TAKEN

1. All conditions of this licence bind any persons whom, 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 section 66 of the 2009 Act, whether or not the licence has been transferred to that person.
2. The Licensee(s) must receive written authorisation from the licensing authority to assign or transfer the consent. The licensing authority must confirm in writing to both the original Licensee(s) and any proposed new Licensee(s) that the licence has been transferred/assigned before any works may commence under the new Licensee(s).
3. The licensee(s) shall inform the licensing authority of the finishing date of the licensed work within 28 days of completion.
4. The licensee(s) shall not carry out any licensable activity other than that detailed in the Marine Licence application form received by the licensing authority, dated 14th November 2017. The licensee(s) shall contact the Department if it is proposed to vary the materials or methods to be used from those described in the documentation supplied in connection with the Marine Licence application.
5. Ongoing remedial works should be completed by 31 March 2020 (as defined in the license extension request). Any deviation from this timeframe must be agreed with the licensing authority beforehand.
6. The licensee(s) shall ensure that a copy of this licence is given to each contractor appointed to carry out part or all of the works. The extent of the works for which the licence has been given and the conditions that are attached to the licence should be made clear to the contractors.

7. The licensee(s) shall, within **eight weeks** after the completion of the licensed works, make a written report to the licensing authority stating the quantity and description of all articles and substances deposited under the authority of this licence.
8. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:
 - a. The premises of the licensee(s)
 - b. The premises of the operating facility
 - c. The site of the works (including on board vessels)

Navigational Safety

9. The licensee(s) must notify The Source Data Receipt team, UK Hydrographic Office, Taunton. Somerset, TA1 2DN (Email: sdr@ukho.gov.uk; Tel: 01823 337900) at least 4 weeks before commencement of the works, to allow for any necessary amendments to nautical charts. The UK Hydrographic Office must also be notified upon completion of the works. **This office must be copied into all notifications.**
10. The licensee(s) shall ensure that details of the works are promulgated to stakeholders through Notice(s) to Mariners and/or radio navigational warnings and publication in appropriate bulletins. This should take place prior to the commencement of operations, as stated within the Notice(s) to Mariners guidance notes, which is usually ten days. The notices should state the nature and timescale of any works carried out in the marine environment relating to the operations. Updates should then be issued as required, to ensure that stakeholders are kept up to date of timings and locations etc. **This office must be copied into all notifications.**
11. The licensee(s) shall ensure that any lights and/or marks to be displayed, in the carrying out of any works in accordance with this licence, must be in line with any requirements of the Commissioner of Irish Lights. The displaying of unauthorised marks or lights is prohibited.
12. The licensee(s) should ensure that if supplies are brought in from Larne, that the Licensee(s) make contact with the Port of Larne.
13. All works will remain within the access and construction footprint as shown on the original drawings.

Environmental Management

14. The licensee(s) must provide a final **Construction Method Statement (CMS)** including a final **Construction Environmental Management Plan (CEMP)** to the licensing authority, before any works begin below the Mean High Water Spring Tide. This should be provided at least 28 days in advance of works taking place.
15. In granting approval for the CMS and the CEMP, the licensing authority may consult any such other advisors, stakeholders or organisations as may be required.
16. The CEMP should include, but is not limited to, the following:
 - Waste storage and disposal, in particular control methods for the prevention of pollution and details of a Contingency Plan if a pollution incident does occur.
 - Mitigation to prevent release of sediment into the marine environment and a contingency plan for prevention of any impacts on aquaculture should also be included.
 - Methods for management of any fuels and storage of fuels on site, including potentially toxic material
 - Details of any environmental monitoring or management to be put in place, for example, Environmental Monitoring Officer roles and responsibilities and protection of wildlife habitat.
17. All operations should be carried out in accordance with the CMS and the CEMP. Any proposal to vary from the methods and mitigation plans set out in the CMS and CEMP, must be sent to the licensing authority for written approval, prior to the commencement of any changes.
18. The licensee(s) should ensure that all deposits made in the course of construction are inert and do not contain any toxic elements.

19. A biosecurity plan should be put in place to prevent the introduction of rats or other invasive mammals to the island. This should include the provision of bait stations on the island and on vessels travelling to the island. Contractors should be made aware of the importance of biosecurity.
20. The following mitigation should be implemented to ensure any displacement or disturbance to birds in the area is minimized:
- To avoid any impact on the breeding season, and therefore minimise the disturbance to a large number of birds, including protected and rare breeding species, works should be undertaken no earlier than 1 September (or later should the birds not have left the island by 1 September). No works will commence until a pre-construction survey undertaken by the RSPB has ascertained that all breeding birds have vacated the island.
 - Works should be planned to conclude at least one month prior to the breeding season (1 February) to minimise any effects on early-arriving breeding species, such as Black-headed Gull and Sandwich Tern. In the event works have not ceased before the first prospective breeding birds arrive, the culmination of works shall be postponed until the breeding season is complete.
 - Monitoring of bird populations in the vicinity of the works and elsewhere around Larne Lough should be monitored throughout the period of operations. Works should be suspended and NIEA informed if any adverse impacts on these populations are detected.
 - If deemed necessary following baseline surveys of the area, RSPB monitoring of bird activity should continue during construction to ensure that disturbance to roosting and foraging species (especially Light-bellied Brent Goose) is minimised.
 - In the event of severe weather resulting in a statutory wildfowling ban, all works should cease until the ban is rescinded and the licensing authority informed.
21. All equipment, temporary structures, debris or waste material generated during the course of construction must be removed within 6 weeks of all work being completed.
22. The licensee(s) shall ensure that all stone to be used in the construction work will be well graded and clean.
23. The licensee(s) shall ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during construction and thereafter.
24. A monitoring programme must be in place to ensure unacceptable levels of suspended sediment are not escaping from the works area. This will consist of a monitoring station no greater than 200m from the construction site, to detect any significant suspended sediment plume resultant from the construction operation.
25. The Licensee(s) must ensure that monitoring is measured in real time at the monitoring sites with an alarm system to inform of control levels being breached.
26. The Licensee(s) must ensure that at the monitoring sites:
1. Suspended solids must not exceed 300mg/l for more than 6 hours and not exceed 600mg/l at any point. If these limits are breached then activities should cease immediately until levels of suspended solids drop to less than 300mg/l;
 2. Concentrations should also be monitored at a reference site to ensure levels do not exceed 10% of the 90 percentile (Background) for more than 6 hours.
27. The Licensee(s) must monitor and ensure that if dissolved oxygen levels within the water column at the monitoring sites fall below 4mg/l¹, then activities must be suspended until the oxygen levels rise above 5mg/l¹.
28. The Licensee(s) must provide weekly notification to the licensing authority that monitoring is operating as required, including details of times when operations ceased due to control level breaches.
29. The licensee(s) shall adhere to the following:
- Works in, near or over watercourses, PPG5 and
 - Prevent Pollution, & Construction and Demolition sites: PPG6: Prevent Pollution.

30. In the event of a discovery of archaeological material (e.g., historic shipwreck remains) during works associated with sea defence repair and construction the licensee must (1) record the position and details of the site; (2) do not disturb the site further and (3) report your discovery to and seek further advice from this Office immediately.

Contact: Marine & Fisheries Division Archaeologist
[rory.mcneary@daera-ni.gov.uk]

Signed on behalf of the Department:



Dated: 20th February 2020



NOTE:

- (1) The licensing authority would advise that this licence does not negate the licensees' responsibility to gain any other environmental or access permissions that may be required to progress the works.
- (2) Under Part 4, Chapter 1, paragraph 72 of the **Marine and Coastal Access Act 2009**, the licensing authority may revoke, vary or suspend this licence if it appears to the authority that the holder is in breach of a condition included in it, or if it appears to the authority that the licence ought to be varied, suspended or revoked because of a change of circumstances relating to the marine environment or human health, including a change in scientific knowledge. A revocation, variation or suspension may also be enforced in the interests of safety of navigation.
- (3) A person who deposits material in contravention of the terms of a licence is guilty of an offence under Section 85 of the Act. It is a defence under paragraph 86 (1) for a person charged with such an offence to prove 'force majeure'. However they are also required to prove that they took steps within a reasonable time to inform the licensing authority of all details pertaining to the incident contained in paragraph 86 (2). The licensing authority shall be obliged to report force majeure cases immediately to the OSPAR Commission.
- (4) Attention is drawn to the necessity of complying where appropriate with the **Radioactive Substances Act 1960**, the **Prevention of Oil Pollution Act 1971** and to the **Merchant Shipping (Dangerous Goods) (Amendment) Rules 1968**.
- (5) If within 28 days of the issue of a licence the person to whom it was issued requests the licensing authority to give him notice in writing of the reasons for the inclusion of any provision in it, the Authority shall comply with his request within 28 days of receiving it.
- (6) Anyone who fails to comply with a condition on a Marine Licence commits an offence under Section 85 of the **Marine and Coastal Access Act 2009**, and may be subject to enforcement action. Possible enforcement actions are compliance notices, remediation notices, fixed monetary penalties and variable monetary penalties. In the worst cases, a person found guilty of an offence on summary conviction may be subject to a fine not exceeding £50,000. In addition, a person found guilty of an offence on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both. Further details can be found at our guidance note <https://www.daera-ni.gov.uk/sites/default/files/publications/doe/marine-licensing-guidance-enforcement-under-part-4-marine-and-coastal-access-act%2C-2009-may-2016.pdf>

Further information from consultation:

1. Northern Ireland Environment Agency – Water Management Unit

You should be aware that it is an offence under the **Water (Northern Ireland) Order 1999** to discharge or deposit whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and /or three months imprisonment.

2. DAERA Marine and Fisheries Division - Marine Conservation and Reporting Team

INFORMATIVES

Marine protected species must be considered and protected at all times. If there is negligible risk of an offence or mitigation reduces the risk to a negligible level, there is no requirement for a wildlife licence.

Marine National Protected Species

The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended), under which it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5 to the Order. This includes the common seal (*Phoca vitulina*), grey seal (*Halichoerus grypus*), basking shark (*Cetorhinus maximus*), angel shark (*Squatina squatina*), common skate (*Dipturus batis*) short snouted seahorse (*Hippocampus hippocampus*), spiny seahorse (*Hippocampus guttulatus*), spiny lobster (*Palinurus elaphus*) and fan mussel (*Atrina fragilis*).

Article 11 of the Wildlife (Northern Ireland) Order 1985 (as amended) provides that a person shall not be guilty of an offence under Article 10 (killing or injuring a species listed in Schedule 5 (as amended)) if the act was incidental to a lawful operation (i.e. activity permitted by a Marine Licence or Planning Permission) and could not reasonably be avoided. A separate marine Wildlife Licence is therefore not required for national marine protected species if a Marine Licence/Planning Permission has been granted, since adherence to the conditions of the Marine Licence should reduce the likelihood of harm to marine national protected species.

Under Article 10 it is an offence to intentionally or recklessly disturb; common seals, grey seals or basking sharks. It is also an offence under Article 10 to intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which these animals (Schedule 5¹) use for shelter or protection; damage or destroy anything which conceals or protects any such structure; or disturb any such animal while it is occupying a structure or place which it uses for shelter or protection.

Under Article 13 it is an offence to sell or transport any Schedule 7 animal dead or alive at any time².

Any person who knowingly causes or permits an act which is made unlawful under Article 10 or Article 13 shall also be guilty of an offence.

If there is evidence of Schedule 5 animals listed above at the site, all works must cease immediately and further advice must be sought from DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast BT7 2JA.

Under the Wildlife (Northern Ireland) Order 1985 (as amended) a licence may be required for any operations which might impact on protected species.

¹ Common skate and angel sharks in respect to Article 10 (1) only and within 6 nautical miles of coastal water only.

² Schedule 7 species includes all Schedule 5 species listed in Appendix A, with the exception of the common skate and angel shark. Sea urchin is protected under Schedule 7 only.

Marine European Protected Species:

The applicant's attention is drawn to regulation 34 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), which states that it is an offence to deliberately capture, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphins, porpoises and whales and the marine turtle species.

(1) It is also an offence to;

- (a) deliberately disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- (b) deliberately disturb such an animal in such a way as to be likely to;
 - (i) affect the local distribution or abundance of the species to which it belongs;
 - (ii) impair its ability to survive, breed or reproduce, or rear or care for its young; or
 - (iii) impair its ability to hibernate or migrate;
- (c) deliberately take or destroy the eggs of such an animal;
- (d) deliberately obstruct access to a breeding site or resting place of such an animal; or
- (e) damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence for any person;

- (a) to have in his possession or control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

If there is evidence of Schedule 2 animals listed above at the site, all works must cease immediately and further advice must be sought from DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast, BT7 2JA.

Under this legislation a licence may be required for any operations which might impact on European Protected Species.

Following two European Court of Justice cases (C-103/00 and C-221/04) "deliberate actions are to be understood as actions by a person who knows, in the light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action"

http://incc.defra.gov.uk/PDF/consultation_epsGuidanceDisturbance_all.pdf

3. DAERA Marine and Fisheries – Sea Fisheries

- It is an offence under Article 47 of the Fisheries Act (NI) 1966 to cause pollution, which is subsequently shown to have a deleterious effect on fish stocks.
- All works near watercourses to be carried out in line with guidance as described in the Pollution Prevention Guidelines 5 (Works in, Near or Liable to Affect Watercourses).

4. Rivers Agency

1. If during the course of developing a site a watercourse is uncovered which was not previously evident, the appropriate DfI Rivers Agency Office should be advised immediately in order that arrangements may be made for the investigation and direction in respect of any possible action necessary to deal with the watercourse. Piped storm drains, culverts, open channels etc. may be considered to be watercourses.
2. Any proposals either temporary or permanent, in connection with the development, which involve interference with any watercourse at the site such as culverting, bridging, diversion, building adjacent or discharge of storm water etc. require the written consent (known as "Schedule 6 Consent") from Rivers Agency.
3. Failure to obtain Schedule 6 Consent is an offence under the provisions of the above Order, which may lead to prosecution or other statutory action as provided for.

In this instance the appropriate Rivers Agency office to contact in respect of Schedule 6 applications and any other general enquiries is:

DfI Rivers,
Lisburn Area Office,
Ravarnet House, Altona Road, Largymore,
LISBURN, BT27 5QB
Tel: 028 9260 6100