



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 REMOVE SANDBAR AT NEWCASTLE HARBOUR AND TO RE-
NOURISH THE SEDIMENT CELL**

Licence Number: ML 26_18

Part 1 - Particulars

1. Licensee(s) Name & Address:

Newry Mourne & Down District Council
Warrenpoint Town Hall
29 Church Street
Warrenpoint
Co Down
BT34 3HN

Kirk Contracts
81 Crossgar Road
Crossgar
BT30 9SX

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

N/A

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

The removal of a sandbar at the entrance to Newcastle harbour. It is intended to remove up to 7,000 tonnes per annum for 3 years from the sandbar, and to disperse the sand 200m north of the harbour onto the shore.

Sand from the sandbar will be extracted using mechanical machinery. An excavator will be used to load the sand onto trailers/dumpers for it to be transported 200 metres north of the harbour for dispersal, where it will be levelled by mechanical shovel. All work will be carried out at low tide and is estimated that works will be completed within three days in each of the years 2019, 2020, 2021.

Access to the sandbar will be via the slipway at the North Quay, Newcastle. This means that movement of machinery over the shore is reduced as much as possible, and takes the route of least disturbance. Only one route will be used

for transporting over the shore and for returning by same. This will ensure that movement of machinery is not unchecked, and that it is limited to a single track to and from the sandbar and the re-nourishing area within 200 metres of the harbour.

4. Location of works:

Sandbar at Newcastle Harbour, County Down:

Irish Grid Ref	= J 380 298
10 digit Grid Ref	= J 38046 29885

Area of re-nourishment

Irish Grid Ref	= J 380 330
10 digit Grid Ref	= J 37959 29905

5. Valid:

From: 01 May 2019
Until: 31 August 2021

Closed periods: works must **NOT** take place between 01 September and 30 April in any year of the licence.
Rationale – to avoid disturbance to over-wintering birds

PART 2: CONDITIONS

The Department of Agriculture, Environment & Rural Affairs (referred to as the licensing authority) authorises **Newry Mourne & Down District Council and Kirk Contracts** to conduct the replacement and maintenance works as 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 must conduct an Environmental Management Plan and supply a copy to the licensing authority before any works commence.
4. Work should take place from **1 May 2019 to 31 August 2021**, and **MUST NOT** occur during the period **from 1 September to 30 April** in any year of the licence. This is to avoid disturbance to over-wintering birds utilising the area to feed.
5. 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.**
6. The licensee(s) shall inform the licensing authority of the proposed starting date of works on each year of the licensed work, at least **14 days** before commencement.
7. A sediment sample was taken in relation to sandbar works at Newcastle Harbour on 29 March 2017. This sample has validity for 3 years. For this licence to remain in force after 29 March 2020, the licensee shall take **one repeat sediment sample** from the sandbar, within the mouth of the Harbour, in 2020 and return results to the Department by **31 March 2020**. This will permit the Department sufficient time to analyse the results before the project recommences in 2020. The details of the sediment sample to be taken must be agreed with the licensing authority before the sample is taken.
8. The licensee(s) shall inform the licensing authority of the finishing date of the licensed work within **28 days** of completion.
9. The licensee(s) shall, within **eight weeks** after the completion of the licensed works, make a written report to the licensing authority to inform that the works have been completed and to confirm that they have been implemented as per Part 1.
10. 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 23 October 2018. 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.
11. 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.

12. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:
 - i. The premises of the licensee(s)
 - ii. The premises of the operating facility
 - iii. The site of the works (including on board vessels)
13. The licensee(s) shall provide the licensing authority with a photographic record of before, during and after, the removal and nourishment locations. This should include 'close up' photographs of the sites, and should be provided to the licensing authority as soon as the work has taken place each year.
14. The licensee shall record and present to the Department the tonnage of wet-sand sediment removed from the sandbar each year for re-nourishment at the designated location.
15. The licensee(s) shall ensure that **a boundary along the Latitude 54.2023 is demarcated** during active works by flagged canes or by hazard tape, and that no mechanical vehicle related to the works travels north of this line from the sandbar in execution of works. This is to ensure that the archaeological features of historic fish traps are protected from the project (MRD255:003 and MRD255:004) located at Lat. 54.202349/Long. - 5.8884782 and Lat. 54.205930/Long. -5.8887247 respectively.

Respect for this demarcated boundary will also ensure that the licensee(s) will not block the natural course of the Shimna or Glen River, as they outlet into Dundrum Bay, nor the outlets onto the beach of the School Stream (337648, 330168) or Lindsay's Stream (337671, 330094), which are north of Newcastle Harbour. The material must also not affect the inlet/outlet pipe of Soak Seaweed Baths located at J3765 3033.
16. The licensee(s) shall ensure that the vehicular traffic takes as straight a route as possible from the mouth of the harbour to the area of re-nourishment (IGR 337959, 329905).
17. The licensee(s) shall ensure that a single transport pathway from the sandbar to the deposition site (no more than 200 metres from the harbour at IGR 337959, 329905), is demarcated during active works with flagged canes or with hazard tape, and that no mechanical vehicle related to the works travels **outside** of the marked single pathway during works. This is to maintain to a minimum the area of shore habitat impacted by compression from mechanical machinery.
18. The licensee(s) shall ensure the material is deposited in a line of trailer loads running parallel to the present beach and approximately 10-15 m seaward of the high tide mark. This work should only take place at low tide.
19. The licensee(s) shall appoint a dedicated Council observer (independent of the Contractor) to carry out a visual inspection:
 - i. to ensure that demarcation of 'working areas' and 'no-go areas' for heavy machinery pertaining to Conditions 17 and 15 are verified and recorded by photograph
 - ii. to ensure that just prior to works commencing, there are no seals in the vicinity of the proposed works as ensured and recorded as per the Habitats Regulations Assessment report dated 12 December 2018. This should also be reflected in the Environmental Management Plan (Condition 3).
20. The licensee(s) shall ensure that access to the site is afforded at all reasonable times, to any archaeologist nominated by DAERA Marine Division to observe the sand removal/deposit operations.
21. The licensee(s) shall pay due regard to coastal and marine historic assets where they remain as archaeological material and shall pay due regard to Strategic Planning Policy Statement for Northern Ireland (SPPS), Planning Policy Statement 6: Planning, Archaeology and the Built Heritage (PPS6) and the UK Marine Policy Statement (UK MPS).

Further, there is the legal obligation to report archaeological objects within 14 days under the provisions of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 and to report historic wreck material to the Receiver of Wreck under the Merchant Shipping Act 1995. In the event of an archaeological discovery being made during works, the licensee(s) must: (1) record the position and details of the site; (2) not disturb the site further and (3) immediately report the discovery to and seek further advice from DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast BT7 2JA for further advice.

Advice to

Marine & Fisheries Division Senior Marine Archaeologist
 rory.mcneary@daera-ni.gov.uk

22. 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.
23. The licensee(s) shall adhere to NIEA's Standing Advice on Pollution Prevention and Discharges:
- www.daera-ni.gov.uk/water-environment-standingadvice

Signed on behalf of the Department:

[Redacted signature]

Dated: 27th March 2019.

Departmental Stamp



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

The licensee's attention is drawn to offences 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.

Water Management Unit provides the following Standing Advice (which can be found at: <https://www.daera-ni.gov.uk/publications/standing-advice-development-may-have-effect-water-environment-including-groundwater-and-fisheries>):

- NIEA Standing Advice on Discharges to the Water Environment;
- NIEA Standing Advice on Pollution Prevention;

2. DAERA Marine Monitoring and Assessment

The licensee's attention is drawn to the following links which provide advice to be considered:

- http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/developers_guides.htm
- https://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_4_pollution_prevention.pdf

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

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 5') 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.

It is the applicant's responsibility to ensure that an offence is not committed. Further advice can 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.

It is the applicant's responsibility to ensure that an offence is not committed. Further advice can 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.

¹ 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://jncc.defra.gov.uk/PDF/consultation_epsGuidanceDisturbance_all.pdf

6. 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.

7. Harbour authority obligations & industry best practice

We would however like to take the opportunity to point the applicant in the direction of the Port Marine Safety Code and it's Guide to Good Practice 2018, which sets out harbour authority obligations and industry best practice on safety and management. Links are available here:

<https://www.gov.uk/government/publications/port-marine-safety-code>

<https://www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations>