



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

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

**MARINE LICENCE VARIATION 2**

**Licence for: Deployment and operation of ¼ Scale tidal renewable devices for research purposes at the  
Minesto tidal test sites within Strangford Lough.**

**Licence Number: ML 27\_17 VAR2**

The Licensing Authority for Northern Ireland as described within the Marine & Coastal Access Act 2009 hereby grants a marine licence authorising the Licensee(s) as detailed below.

**Part 1 - Particulars**

**Interpretation**

In this licence, unless otherwise stated, terms are as defined in the Marine and Coastal Access Act 2009 (The Act).

**Licensing Authority Contact Details**

Marine & Fisheries Division  
Marine Strategy and Licensing  
Klondyke Building  
Cromac Avenue  
Belfast  
BT7 2JA.

E-mail: marinelicensingteam@daera-ni.gov.uk  
Telephone: 028 905 69238

**1. Licensee(s) Name & Address:**

Minesto UK Ltd.  
Celtic House  
41-43 Market Street  
Holyhead  
Anglesey  
LL65 1UN

Minesto Unit 13 Castle Yard  
Castle Street  
Portaferry  
Co. Down  
BT22 1NZ



**2. Area of Deposit:**

Ballyhenry Bay Strangford Lough Site H (Lat: 54: 23.0544 N; Long: 05: 33.8040 W) or Site J (Lat: 54: 23.1245 N; Long: 05: 33.0044 W) as detailed in Marine Licence application dated 13 March 2014 and Environmental Statement number 325.01/08/12 produced by Marengo Environmental Consultants dated September 2012. This license permits the continued placement and operation of the DGO device until January 31<sup>st</sup> 2025 superseding licence ML27/14 Var 1.

**3. Valid:**

**From: 31/1/2020.**

**Until: 31/1/2025.**

**PART 2: CONDITIONS**

The Department of Agriculture, Environment and Rural Affairs (referred to as the licensing authority) authorises the Licensee(s) to deposit in the sea, the substances or articles (except for dredged 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. The licensee shall not deposit any other material than that detailed in the Marine Licence application form received by the Department dated 13<sup>th</sup> March 2014.  
*Reason: To allow the licensing authority to monitor the works as deemed fit.*
2. The licensee 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.  
*Reason: To allow the licensing authority to maintain a record of works carried out within the licensable area.*
3. In the event of the licensee becoming aware that any of the information on which the licence was based has changed, the Department shall be immediately notified in writing of the alterations. It should be noted that alterations may invalidate a licence, and that an application for a new licence may be necessary.
4. The licensee shall ensure that a JNCC approved Marine Mammal Observer, will be used during all times that the Deep Green Ocean Kite Device is in operation.
5. If a seal, cetacean, basking shark, or other large marine animal passes within 50 meters of the device, the device will be stopped until the animal has passed out of the 50 meter buffer zone.
6. If a strike is detected on the device, it shall be shut down immediately and the Department informed.
7. The Licensee shall submit to the Department, monthly electronic data sheets, having one tab per specific device operation, detailing, date, time and visual observations for seals, cetaceans, basking sharks and diving birds.



8. The Licensee shall prior to permission being granted for the temporary removal of precautionary shutdown procedure, submit the following documentation to enable the Department to assess potential impact to site protected species.
- (i) Collision Risk modeling for the proposed activity.
  - (ii) Report outlining efficacy of Marine Mammal Detection System installed / used
  - (iii) Revised HRA of the proposed activity.
9. The licensee shall ensure the use of the active sonar devices are installed and working, during the period within which the marine mammal precautionary shutdown procedure is removed and the active sonar devices are able to detect a number of close range passages (within 50m) of the turbine. These active sonar devices will be used by the licensee to record passages of seals and cetaceans within 50 meters of the device and not initiate precautionary marine mammal shutdown procedure.
10. Subject to time constraints caused by the time delay between the collection of data and the processing of such data for the active sonar, the Licensee shall provide weekly reports to the Licensing Authority (DAERA Marine Licensing). To the extent it is possible , the report shall include details of each of the following:
- a) the time and date of all detections observed using the Marine Mammal detection system within 50m of the SeaSeaKite device;
  - b) any targets observed by the sonar device should be classified as "marine mammals" or "other"
  - c) any targets observed by the sonar device should be classified as either "harbour porpoise", "seal", "unknown marine mammal", "other" or "unknown" shall be used;
  - d) whether the Sea Kite device was operational at the time of the sighting of the target(s) and the tide state also;
  - e) a daily, a weekly and monthly averages of the passage rates (since the start of the removal of the marine mammal precautionary shutdown). Previously observed 9 (i) minimum (ii) maximum and (iii) average passage rates will be used for comparison with the passage rates derived from the installed sonar device.

*Reason: To ensure no additional works are conducted without the knowledge of the licensing authority.*

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.

*Reason: To ensure no breaches of the licence conditions occur.*

12. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer authorised under the Marine and Coastal Access Act 2009 :

- a. The premises of the Licensee(s)
- b. The premises of the operating facility
- c. The site of the works (including on board vessels)

*Reason: To ensure any enforcement officer can check the works against the licence.*

13. The licensee shall ensure that prior to works commencing a test report on the efficacy of the Marine Mammal Detection System (MMDS) and shut-down procedure shall be submitted and approved by the Department in writing. A periodic (end of month) Marine Mammal Observer (MMO) and bird observer report shall be submitted to the Department.



14. The licensee(s) shall ensure that the 'Special Marks' currently indicating the test site boundaries are maintained for the duration of this deployment.

*Reason: To ensure navigational safety to other Lough users.*

15. The licensee(s) shall ensure that the unit is, whilst submerged, maintained in a negatively buoyant condition and that during deployment and recovery operations the unit is securely moored to prevent any chance of floataway whilst in a neutral or positive buoyancy state.

*Reason: To minimize risk of navigational hazard to other users of the sea*

16. The licensee(s) attention is drawn to Article 42 of the **Historic Monuments and Archaeological Objects (NI) Order 1995** that requires finders of archaeological objects to report within 14 days to a relevant authority. During installation and/or Video surveys the Department would require you in the event of a discovery of an archaeological object and/or remains during the works the licensee(s) must: (1) record the position and details of the site; (2) not disturb the site further and (3) report your discovery to and seek further advice from the Department immediately.

*Reason: To ensure recovered archaeological material is recorded with the appropriate authority.*

17. The licensee(s) must report any recovered wreck material to the Receiver of Wreck (Maritime and Coastguard Agency) in accordance with the **Merchant Shipping Act 1995**.

Contact Marine and Fisheries Division Archaeologist  
[rory.mcneary@daera-ni.gov.uk]  
Quote reference: **ML14/17**

*Reason: To ensure recovered wreck material is recorded with the appropriate authority.*

Signed on behalf of the Department:



Dated: 31s January 2020



**NOTE:**

- 1) 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**.
- 2) 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.



- 3) 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 may be subject to a fine of up to £50,000 or to imprisonment for a term not exceeding two years or to both.
- 4) The Licensee(s) are 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 the licence does not absolve the Licensee(s) from obtaining such other authorizations and consents etc. which may be required under statute.
- 5) **Variation, Suspension, Revocation and Transfer:** Under section 72 of the 2009 Act the licensing authority may by notice vary, suspend or revoke the licence granted by them if it appears to the licensing authority that there has been a breach of the provisions of the licence or for any such other reason that appears to be relevant to the authority under section 72(2) or (3) of that Act.
- 6) **Breach of requirement for, or conditions of, the licence:** Under section 65 of the Act it is an offence to carry on a licensable activity without a marine licence or to fail to comply with any condition of a marine licence.
- 7) **Defences: actions taken in an emergency:** Under section 86 of the 2009 Act, it is a defence for a person charged with an offence under section 85 in relation to any activity, to prove that the activity was carried out for the purpose of saving life or for the purposes of securing the safety of a vessel, aircraft or marine structure 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 86 1(b) of the 2009 Act.
- 8) **Offences relating to information:** Under section 89 of the 2009 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 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 2009 Act or this licence.

### **Further information from consultation:**

#### **1. Northern Ireland Environment Agency – Biodiversity & Conservation Science.**

CS concludes that there are no significant ornithological issues associated with this proposal provided adequate measures are taken to avoid spillage of fuel or other toxic substances during operations.

#### **2. DAERA – Inland Fisheries**

DAERA Inland Fisheries have no objections to the proposed development, but would like to remind the applicant that:

**It is an offence under section 47 of the Fisheries (NI) Act 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks and that they may be liable to criminal and civil court action for the cost of restocking/rehabilitating a watercourse should a fish kill occur.**

#### **3. DAERA - Sea Fisheries**

DAERA Fisheries Inspectorate have no issues or concerns to raise from an aquaculture / sea fisheries aspect, but we would like to remind the applicant that:

**It is an offence under Article 47 of the Fisheries Act (Northern Ireland) 1966 to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.**



#### **4. DAERA – Marine & Fisheries Division - Conservation and Reporting**

##### **Marine National Protected Species:**

In addition to protection offered under designated sites, marine mammals are also protected throughout their range through the following nature conservation legislation. Under this legislation it is the individual animal that is protected, rather than the overall population.

- The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended); and
- The Wildlife (Northern Ireland) Order 1985 (as amended).

This includes marine mammals such as cetaceans, basking shark and seals. Under this legislation it is an offence to disturb, injure or harm marine protected species, however, the offences that apply will depend on the species, activity and location.

A wildlife licence may be issued to authorise what would otherwise be an offence under the nature conservation legislation. In all cases, it is recommended that mitigation should be used in the first instance in order to reduce the risk of an offence. For example, during the proposed work it is recommended that the applicant carries out a visual inspection to ensure no seals are present where works are taking place. 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.

While Marine and Fisheries Division will provide assistance and guidance on individual cases, it is the responsibility of the applicant to assess the risk of committing a wildlife offence when carrying out a proposed activity and also the need for a wildlife licence application.

##### **Informatives**

##### **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<sup>1</sup>) 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 time<sup>2</sup>.

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.

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

<sup>2</sup> 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 licensee'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 license may be required for any operations which might impact on European Protected Species.

<sup>1</sup> 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](http://incc.defra.gov.uk/PDF/consultation_epsGuidanceDisturbance_all.pdf)



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