



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 Repair Works at Portstewart Harbour

Licence Number: ML 32_18

Part 1 - Particulars

1. Licensee(s) Name & Address:

Mr John Morton
Causeway Coast and Glens Borough Council
66 Portstewart Road
Coleraine
BT52 1EY

William & Henry Alexander (Civil Engineering) Ltd
2 Waterworks Road
Omagh
BT79 7JS

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:

Concrete repairs are required to the slipway, access steps to low level quays and the lip of the quay wall. The works are required to improve safety and increase the longevity of existing structures.

4. Location of works:

Portstewart Harbour
IGR 281539, 438538

5. Valid:

From: 19th March 2019
Until: 28th February 2022

PART 2: CONDITIONS

The Department of Agriculture, Environment & Rural Affairs (referred to as the licensing authority) authorises **Causeway Coast and Glens Borough Council and William & Henry Alexander (Civil Engineering) 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 authorized 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 authorization 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 20th November 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.
5. 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.
6. 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.
7. 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)
8. 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.
9. It is the legal obligation of the licensee(s) 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 a discovery of an archaeological object and/or remains during works the Department would ask that you: (1) record the position and details of the site; (2) do not disturb the site further and (3) contact DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast BT7 2JA for further advice.

10. The Licencee(s) must issue local notification to marine users - including fisherman's organisations, neighbouring port authorities and other local stakeholders - to ensure that they are made fully aware of the activity.
11. The Licencee(s) 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.

Signed on behalf of the Department:

Dated: 14/3/2019

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) 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.

Water Management Unit would refer the applicant to DAERA's Standing Advice on Pollution Prevention and Discharges to the Water Environment, available at: www.daera-ni.gov.uk/water-environment-standingadvice

2. DAERA Marine & Fisheries – Inland Fisheries & Sea Fisheries

The licensee should be made aware that it is an offence, under Section 47 of the Fisheries Act (Northern Ireland) 1966, to cause pollution which is subsequently shown to have a deleterious effect on fish.

3. DAERA Marine & Fisheries – Marine Conservation

Marine National Protected Species

The licensee'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 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.

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 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 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

4. Maritime And Coastguard Agency

The licensee shall ensure suitable bunding, storage facilities are employed to prevent the release of fuel oils, lubricating fluids associated with the plant and equipment into the marine environment.

5. DAERA Marine & Fisheries – Marine Archaeology

The Licence Holder shall be aware of the need to pay due regard to coastal and marine historic assets where they remain as archaeological material and attention is drawn 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).

